



UNITED FOR LOCAL TELEVISION
Consultation Response

*“Ofcom’s Second Public Service Broadcasting Review – Phase One”
Ofcom consultation published 10/04/08*

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Section 1 – Foreword

United for Local Television advocates reserved capacity for local TV.

Since its formation in 2003, Ofcom has not conducted any dedicated consultation on the options to develop local TV, despite recognising the risk of market failure in local broadcasting.

During the passage of the Communications Act the Labour Government explicitly stated that Ofcom would be required to evaluate local TV as one of its core duties to citizens. In rejecting Lord Thomson of Monifeith's proposed amendments on 6 May 2003 Baroness Blackstone responded for the Government:

"Ofcom already has a number of general duties that one would expect to encourage the development of local TV... I am confident that that will happen. Ofcom's duty in Clause 3(1) is to further the interests of consumers and the community as a whole. Put in the context of Ofcom's duty in subsection (2)(c), to secure, "a wide range of television and radio services which . . . are both of high quality and calculated to appeal to a variety of tastes and interests" and one can see the relevance of Ofcom supporting and encouraging the development of community TV and radio."

The demand for local TV cuts across all parties. In the Adjournment Debate in the House of Commons on 24 April 2007, Edward Vaizey for the Conservatives, stated:

"I do not want locally auctioned channels to be block-bought and turned into gaming or shopping channels; there must be a system to ensure that local television continues."

By 19 June 2008, 159 MPs had signed Early Day Motion 1013 calling for local television to be made universally available for all citizens.

So why does Ofcom refuse to conduct any cost benefit analysis on reserving Freeview capacity for local TV?

Ofcom has managed to adopt numerous contradictory stances to justify its reluctance towards examining the policy options for local TV. In recent months, Ofcom has sought to argue that:

- (i) gifted DTT capacity for local TV would have an unacceptably high opportunity cost;
- (ii) the value of gifted DTT capacity is so negligible that it would do nothing to assist the development of local TV;
- (iii) local TV would be far more viable on broadband where it is liberated from the high costs of DTT carriage;
- (iv) the cost of DTT carriage is immaterial in relation to other costs faced by local TV service providers;
- (v) there is no market failure in local TV which requires reserved DTT capacity;
- (vi) there is market failure in local TV which requires direct funding in order to pay for DTT capacity;
- (vii) add/drop is not worthy of further consideration; and
- (viii) add/drop may be worthy of further consideration.

There is a reason why Ofcom is unable to offer a consistent, rational argument against reserving DTT capacity for local TV – it has never made any serious attempt to consider the policy options in a joined up manner. Ofcom's Digital Dividend Review was conducted as an entirely separate exercise from the review of Public Service Broadcasting. As a result, Ofcom reached the extraordinary conclusion that direct funding was the most appropriate solution to address market failure in local TV – without any analysis as to whether (and if so how) direct funding might possibly work.

Local TV on Freeview was the number 1 new application demanded by consumers in Ofcom's 2007 DDR research. An evidence-based regulator would be expected to use this to prompt it to undertake analysis on local TV policy options. This PSB Review provides an opportunity for Ofcom to finally conduct serious cost benefit analysis on all policy options for local TV, analysis that was recommended at the conclusion of the first PSB Review.

United for Local Television advocates the sixth channel should be a local channel with "must carry" status on Freeview and cable.

Channel 6 would enhance the plurality and diversity of TV services available to all UK citizens, providing local news, local debate and local advertising. So what does Ofcom have to fear from cost benefit analysis of the Channel 6 proposal?

ITV1 could not have made more clear their lack of long term commitment to regional news, let alone other regional programming, such as the arts, religion, current affairs, local history and politics. The UK has one of the least developed local TV infrastructures in the entire democratic world. Local TV on Freeview would reinvigorate UK democracy, enabling televised debate and discussion on the major local issues for the first time.

Ofcom's PSB Review is based on a false premise. Ofcom repeatedly states that the value of subsidised spectrum is diminishing. However, the six current Freeview multiplex operators are gifted spectrum worth hundreds of millions of pounds per annum. It is Ofcom's responsibility to ensure the value of this subsidy is captured and used to achieve the statutory duties to citizens granted by Parliament to Ofcom.

There is a high risk the market will continue to fail to deliver local public service television channels ("*local TV*") without positive action by Ofcom and Government. There is a paradox in Ofcom attempting to salvage regional programming on ITV1 at the same time as it is recklessly withdrawing the RSL licensing regime for local TV.

In a modern democracy, it is truly shocking that most citizens have no access to a local TV channel providing access to local news and information. As long ago as 2005 DCMS and Ofcom commissioned credible analysis to demonstrate local TV would be financially viable if it were able to secure access to the major DTT transmitter stations. The time has come for Ofcom to consider why it might be that almost every nation in the democratic world reserves access on their major TV platforms for local TV channels. The time has come for Ofcom to conduct objective and rigorous cost benefit analysis on local TV for all.

Jaqui Devereux

Spokesperson, United for Local Television

19 June 2008

Section 2 – Consultation questions

Section 3. How well are the public service broadcasters delivering public purposes?

3i) Do you agree with Ofcom's assessment that television continues to have an essential role in delivering the purposes of public service broadcasting?

The suggestion that viewers are switching off television is not justified by any evidence.

1. Ofcom has produced no evidence to justify its statement that:

*"Public service content is becoming a more relevant concept than public service broadcasting for many people."*¹

2. New technologies and applications are complementing, rather than replacing traditional television. Despite rapid technological change, TV viewing habits have barely changed at all. According to Thinkbox 16-24 year olds watch 2.6 hours of TV a day, the same as 10 years ago. Further, 15 to 34 year olds watch TV for only around 20 minutes less than adults in the 34 to 54 year old age group. Ofcom's research for the PSB Review suggests the average adult spends 37 minutes a day online at home, compared to 3 hours 36 minutes watching television.
3. Just as the death of TV has been greatly exaggerated, so has the collapse of the incumbent PSB channels. DGA analysis published in 2006 predicted the five heritage channels would enjoy a share of total viewing of 58.7 per cent by 2012 – still more than half of all viewing.

The Internet is a channel of delivery, not an alternative to programme-making

4. Television and Internet play different but complementary, roles. The Internet is a tremendous educational resource, but few people search online in the way they switch-on to TV channels. Online search can be limited to narrow interests. Television is able to further broaden the mind, providing information on subjects the viewer may not have sought out on line. The Internet is a new tool for accessing content, but in no sense replaces the requirement for traditional programme-making.
5. An existing local TV channel, SIX TV in Oxford, has produced a documentary about how enterprise is taught in Oxfordshire schools. Few Oxfordshire residents could ever be expected to seek out this type of content online. It is only because such documentaries form part of a schedule of an established local TV channel, which viewers actively "flick to" for local programming, that such documentaries attract viewer feedback and praise. With priority status on the EPG, a local TV channel on Freeview could drive traffic to a range of PSB programming highly unlikely to be discovered if purely relegated to one of thousands of websites on the net.
6. The Competition Commission notes that just three providers – the BBC, ITN and Sky News – together account for at least 97.5 per cent of total television news viewing.² The Commission further comments that:

*"We consider that for the time being and for the foreseeable future, online sources of news are more likely to complement than to replace television and other traditional news platforms. We also note that online news is still largely provided by existing media players."*³

¹ Ofcom (2008), *Ofcom's Second Public Service Broadcasting Review, Phase One: The Digital Opportunity – consultation*, London: Ofcom (generally referred to in this submission as the "consultation" unless the context otherwise requires)

² Competition Commission (2007), *Acquisition by British Sky Broadcasting plc of 17.9 per cent of the shares in ITV plc – Report sent to Secretary of State (BERR)*, London: Competition Commission

³ "Ofcom said that its research had shown that Internet news was primarily a complement to, not a substitute for, broadcast television news which was regarded in 2006 by 65 per cent of people as their primary news source. It had found the Internet to be used by people as a supplementary rather than a main source of news. The impact of the Internet was in any event constrained by the fact that many of the Internet sources of news were from established media providers." Source: Competition

The notion that viewers seek to “interact” with TV more than the past is not borne out by the evidence provided

7. Figure 33 of the consultation document (page 60) lists Ofcom’s opinion on the “*relative availability and discoverability of online public service content*”. According to Ofcom, the availability of news and comment is “*extensive*” but social networks and aggregators “*limited*”. This list appears out of place within the context of the PSB Review. The role and purpose of the PSB Review is not just to consider any type of content, but specifically audiovisual content.
8. Nobody can deny that the Internet is a tremendously valuable resource, sometimes reliable. However, the Internet is only an extension of publishing platforms which have been available off-line for many years. A viewer to a programme is not concerned by the channel of delivery, it is the quality of programme content that matters at the time of viewing.
9. It is conceivable that future TV services will be more interactive than currently, although this will not diminish the desire from viewers seeking to “sit back” and enjoy quality programming. Perhaps a viewer will pick up a phone to vote at the end of Big Brother but this is an extension of time-old participation techniques. Similarly, the ability to time-shift content was not an invention of the Internet age – the analogue video recorder has been offering the same application for thirty years. It may be easy to email a programme, but plenty of viewers used to write to Jim’ll Fix It. Even ‘red button’ services can be seen to be a development of traditional teletext.
10. The Internet forums are full of discussions about the previous night’s TV. As technology advances, there is little evidence of diminishing demand for good old fashioned programmes.

The business model for Internet TV generally relies upon content produced for traditional platforms

11. There is surprisingly wide consensus that traditional TV will continue to dominate broadcasting viewing and revenues. Screen Digest forecasts that the traditional TV advertising market will be worth £3.839bn in 2012. In contrast, all revenues associated with open Internet TV services (advertising, subscription and pay-per-view) are forecast at just £200m.⁴
12. ZenithOptimedia forecast IPTV growth from 0.2 per cent household penetration in 2006 to 1.6 per cent in 2012.⁵ However inaccurate this forecast, IPTV is nowhere near becoming universally available, free at the point of use. Around a third of all adults have still **never used** the Internet. There is little evidence these late adaptors are all about to be rapidly converted in the run up to DSO.
13. The business model for Internet TV generally relies upon non-conventional production methods (e.g. non-professional content or product placement) or, for the most popular content, programming originally produced for conventional TV platforms. Ofcom has produced no business model to suggest that content of narrow geographic appeal and/or limited longevity (e.g. local programmes) could be viable in the immediate future if purely restricted to broadband platforms.

If there is a market failure online, that is almost certainly because of a market failure offline

14. Convergence is real. As Ofcom’s consultation acknowledges, “*the future of UK media provision is highly uncertain.*” Despite this, Ofcom continues to have a requirement (enshrined in law) to consider TV programming separately from other forms of content provision.
15. If there is a market failure in online provision (such as local TV programming), it is almost certainly because of a market failure offline (for example, local TV’s failure to secure access to the major TV platforms). A local TV provider on DTT would be certain to have a complementary

Commission (2007), *Summary of evidence provided by Ofcom at hearings on 26 June 2007 and 18 July 2007*, London: Competition Commission

⁴ Source: Sweeney, Mark (14/01/08), *Show me the money* in The Guardian Joined-up media supplement, London: Guardian

⁵ ZenithOptimedia (2007), *UK Television Forecasts to 2012*, London: ZenithOptimedia

online portal providing searchable video content. Ofcom should be extremely cautious before determining there is a market failure in PSB provision which requires intervention online, when the root cause is almost certainly offline.

Public purposes for local broadcasting

16. It is notable that Ofcom has failed to put forward any questions about the provision of public service radio in the consultation. Although Ofcom has produced a number of separate consultations on the future of radio, it has not once consulted on its “*public purposes for radio*”.
17. United for Local Television believes it is important to consider the provision of public purposes of local broadcasting in television as well as in radio. Ofcom’s radio consultation directly led to commercial radio stations being granted renewed licences and with no application of opportunity cost pricing mechanisms. In stark contrast, Ofcom has refused to conduct a single dedicated consultation on local TV, has not once issued a new Local TV licence since taking over from the ITC and is now withdrawing the entire Local TV licensing regime.
18. Ofcom should be guided first and foremost by its statutory duties. Ofcom’s primary PSB duty is to consider “*the desirability of promoting the fulfillment of the purposes of public service television broadcasting*”. This duty applies to all television, not just the incumbent PSB operators. It does not apply to radio. It is therefore all the more surprising Ofcom is willing to consider intervention to promote public purposes in local radio, but not local TV.

3ii) Do you agree that UK-originated output is fundamental to the delivery of public service broadcasting purposes?

UK-originated content is most valued in news, current affairs, region/nation programming and serious factual

19. A simplistic assumption appears to be made by Ofcom that all UK-originated content is PSB content, and all non-UK content is not PSB content. In practice, a great deal of UK content cannot be regarded as PSB and the very best imported content often does fulfil PSB purposes. UK original content is frequently less expensive than the most popular genres of imported content. The UK has developed a world-leading industry in exporting its programme content and formats precisely because many of its programmes can deliver audiences on modest budgets.
20. Even so, Ofcom’s argument is not unreasonable. Perhaps as important as UK production is the production of programming **throughout** the UK, representing all of its constituent nations and regions. It is impossible to argue that UK-originated output is of fundamental importance, but then accept that it is disproportionately focused on one part of the UK to the detriment of all others.
21. Ofcom’s research demonstrates the public demand for UK content is principally focused on news, current affairs, region/nation programming and serious factual.⁶

ITV’s own investor presentations demonstrate the value of UK production

22. ITV plc’s investor presentations demonstrate the enduring popularity of UK production for UK audiences, with 8 out of 10 of the most popular programmes in 2007 being provided by the commercial broadcaster. It is difficult to conceive of circumstances in which ITV1 would not wish to produce such content.

⁶ Figure 8 of the consultation document

Top 10 UK series 2007*

Rank	Title	Channel	
1	Coronation Street	ITV1	10.1 m
2	The X Factor	ITV1	9.3 m
3	Dancing on Ice	ITV1	9.0 m
4	EastEnders	BBC1	8.7 m
5	Britain's Got Talent	ITV1	8.3 m
6	Foyle's War	ITV1	8.0 m
7	Wild at Heart	ITV1	7.9 m
8	The Royal	ITV1	7.7 m
9	Doctor Who	BBC1	7.6 m
10	Heartbeat	ITV1	7.5 m

Top 10 US imports 2007

Rank	Title	Channel	
134	Heroes	BBC2	3.3 m
166	CSI: Crime Scheme Investigation	Five	2.8 m
170	Ugly Betty	Ch.4	2.7 m
187	Desperate Housewives	Ch.4	2.6 m
189	CSI: New York	Five	2.6 m
196	CSI: Miami	Five	2.5 m
203	House	Five	2.3 m
269	Medium	BBC1	1.9 m
277	My name is Earl	Ch.4	1.8 m
316	NCIS	Five	1.6 m

Source: BARB series average's. 1800-2300 *excludes films, sports, news and one-offs⁷

Section 4. The changing market environment

4i) Do you agree with Ofcom's conclusions about the way that other digital channels and interactive media contribute towards the public purposes?

Pay-TV cannot, by definition, contribute to the purposes of PSB

23. Ofcom should resist describing the incumbent PSB operators as the “*main channels*”, a term which denigrates other digital channels. Further, it is wrong for Ofcom to consider “*digital channels*” as one market sector. In reality, digital channels form two distinct and separate market sectors: pay-TV and free-to-air (FTA). Pay-TV offers premium services to those able and willing to pay for multi-channels, often of a specialist nature. Ofcom is currently undertaking an investigation into the UK's pay-TV market. However, it is fair to assume consumers are acquiring pay-TV services primarily in order to obtain content that cannot be obtained FTA.
24. Pay-TV channels cannot, by definition, contribute to PSB purposes. It is a widely accepted principle that UK public services should be accessible to all citizens, free at the point of use. The existence of privately-funded schools and hospitals does not lead any policy makers to conclude there should be no publicly-funded education or health services, universally available to all citizens. It would be extraordinary for the PSB Review to take account of pay-TV services (including broadband-based services) when considering the extent to which digital channels contribute to PSB purposes.

The digital dividend is in danger of leading to a digital disaster

25. Ofcom's research shows a surprisingly ambivalent attitude amongst Freeview viewers to the new channels available to them. To quote Ofcom's research findings:

⁷ ITV plc (12-09-07), *ITV strategy update – investor presentation*, London: ITV

“Among people with Freeview only 30% claimed to be satisfied with other digital channels.”⁸

26. Ofcom’s research notes the striking difference between satisfaction levels between cab/sat homes and DTT homes:

“This differs depending on TV platform. For viewers with cable or satellite television the digital channels are their main source for entertainment, sport and knowledge about topics such as art, science, nature and history, although they are still most likely to switch on to the main TV channels for news about the UK, the world, their region/nation and their local area. On the other hand, people with Freeview continue to use TV on the main channels as their main source for most content...”⁹

27. The DSO process was never intended to force viewers to adopt pay-platforms to continue to receive PSB content. For most viewers, there is an expectation that DSO will deliver a diversity of new, original content serving a wide range of tastes and interests, including content fulfilling PSB purposes from both the UK and around the world. Ofcom’s research suggests this expectation is being fulfilled to a far greater degree in cab/sat homes than in FTA homes. If digital switchover leads to a reduction in PSB content in FTA homes, then the so-called digital dividend is in danger of leading to a digital disaster for many viewers.

Viewers are not always loyal to the incumbent PSB operators when presented with credible alternatives

28. It is in the interests of the incumbent PSB operators to minimise the original production on their portfolio channels in order to protect the market share of their core services, where they tend to charge a premium to advertisers.
29. In Ofcom’s PSB research, a surprisingly low number of Freeview households indicated they would miss digital TV if they had to live without it – under 10 per cent. This demonstrates the strong danger the Government’s policy of replacing analogue TV with DTT is failing to deliver the breadth and diversity of new channels citizens truly demand. The same question shows a completely different picture in pay-TV households. In these homes, more people say they could not live without digital channels than the incumbent PSB channels.
30. Audiences have proven they are not always loyal to the incumbent PSB networks when they are presented with a credible alternative to them. However, the most popular TV platform in the UK today is DTT. The incumbent PSB operators enjoy a dominant position on this platform. When the only serious competition to the PSB operators comes from their own sister services, this inevitably raises questions about the existence of market power.

Market power acts to diminish the benefits of true competition

31. The presence of market power can be expected to prevent the market from securing the full benefits of competition and plurality. Where there is market power, the emergence of new market players would generally be expected to benefit viewers.
32. There are two main policy options available to Ofcom and Government in considering the future of PSB:
- (i) encouraging competition – assigning regulatory resources to new public service entrants in a fair, open and non-discriminatory manner ; or
 - (ii) restricting competition – apportioning all regulatory resources to a cartel of incumbent operators.

⁸ Iposo-Mori (April 2008), *The audience’s view on the future of Public Service Broadcasting Final Report*

⁹ Ibid

33. In reaching any conclusion on the two options, it is important to consider that European Commission policy requires the granting of state aid to follow a process of clearly identifying the problem to be addressed and of choosing the least distortive means of solving it.

Ofcom appears confused whether or not it values competition

34. Throughout the consultation, Ofcom argues competition is required to secure quality PSB services. It is therefore paradoxical that Ofcom also makes the very opposite argument throughout the consultation – blaming the growth of multi-channels for the diminishing quality and quantity of PSB content. Ofcom appears confused – is more intensive competition a threat or an opportunity for PSB providers? Are there barriers of entry preventing new PSB entrants from fulfilling their potential? If so, should intervention be focused on creating new opportunities?
35. Propping up failing analogue institutions appears unlikely to be the most appropriate response to the digital challenge. One credible option must be to break down barriers of entry to enable new entrants to benefit from the success of the DTT platform.

The incumbent PSBs enjoy a dominant position on the DTT platform

36. The six-multiplex DTT platform is already dominated by the incumbent PSB operators. There are only 10 peak-time services on the whole of the Freeview platform provided by broadcasters unconnected with the analogue PSBs. These consist of:
- 4 shopping channels;
 - 2 men's channels (Nuts & Virgin1);
 - 1 music video channel (FTN); and
 - 3 Sky channels, which Ofcom is currently consulting on converting to subscription services.
37. None of these services meet the demand for local news content or significant new, high quality, productions from the nations and regions of the UK.

Shopping channels have a lucrative business model

38. Shopping channels supply advertising 24/7 and do not have to comply with the requirement to separate their editorial from advertising content. This business model is highly lucrative – low cost studio based programmes supply constant advertising with no need to produce objective news or other quality programming.
39. There are four main shopping channels on the 'Freeview' platform (this ignores other teleshopping outside of peak times). Ideal Shopping has reportedly extended its contract until 2018 and QVC until 2022.

The market for FTA services appears defective

40. It should be of serious concern to Ofcom that the market for FTA services would appear to be defective. It is only by enhancing the plurality of FTA services that it is possible to enhance the diversity of agendas, opinions, perspectives and priorities in the provision of information, news and current affairs on a universal basis. Where the only effective competition to the incumbent FTA services comes from their own 'sister' services there is an obvious risk to diversity and plurality of voice.
41. ITV plc acknowledges that its services are far more dominant on DTT than other digital TV platforms:

“it is...very clearly and directly in ITV's commercial interest for the DTT platform to maintain its growth and achieve “default” status as a result of switchover. This

*is because ITV's channels achieve significantly higher viewing shares on free-to-air platforms – particularly DTT...*¹⁰

42. Ofcom and the Government gift DTT capacity to the incumbent PSB operators not just for their PSB services but, also, for their non-PSB services. The monopolisation of universal DTT capacity by the incumbent PSB operators clearly risks distorting the UK broadcasting market.
43. In contrast with pay-TV homes, the analogue incumbent operators enjoy a market share of approximately 90 per cent (including their portfolio channels) in DTT-only homes. In effect, the Government and Ofcom have recreated the analogue monopoly on DTT.

If the PSB operators face a more competitive environment, does this justify protectionist measures?

44. There is a fundamental contradiction at the heart of Ofcom's PSB Review. Ofcom argues passionately that the incumbent PSB operators are the main source of provision for the most popular genres of PSB content. As evidence, Ofcom points to the low reach and impact of all other digital channels. At the same time, Ofcom seeks to argue that the PSB operators are facing such intensive competition from digital channels that they may require new forms of funding support.
45. Ofcom cannot have it both ways. If the commercial PSB operators are entering a more competitive environment then, prima facie, it is right and proper that any new forms of public support are available to new entrants. Alternatively, if commercial PSB operators continue to enjoy a dominant and privileged position then, prima facie, there can be little justification for entrenching this position further with additional public support. It is difficult to understand the argument that, because the incumbent PSB operators are facing increased competition, primarily from their own portfolio channels, they might be entitled to claim additional public support.
46. There may well be a case for additional funding support for the incumbent PSBs. However, this case must be weighed against the benefits of supporting and encouraging new entrants.

There is a simple explanation why digital channels cannot generally afford to invest in significant UK programming – they are not generally available in all UK homes

47. Ofcom states that digital channels have, generally, failed to invest significantly in UK original programming albeit this analysis requires Ofcom to exclude sports programming. Notably, Ofcom fails to reference the multi-million pound investment made by the UK's RSL sector to develop local service over the past ten years, an investment largely written-off as a result of the failure to put in place a long-term licensing regime for local channels.
48. There is a simple explanation why the main five channels have invested so much in UK original programming – they are the channels most widely available to UK citizens. With cab/sat penetration together accounting for 50 per cent of all UK homes, it would be commercially difficult to justify investing in original UK content which around half the population is unable to access even on main TV sets, let alone secondary sets.¹¹
49. It is too early to say whether the launch of Freesat will have a significant impact on the economics of delivering FTA services to all UK citizens. With Freeview already the UK's number 1 TV platform, there is a risk that Freesat will marginally increase costs for UK-wide channel operators, providing yet another platform they must seek to obtain carriage on. Despite this, United for Local Television welcomes Freesat as a new wholesale platform committed to universal provision of FTA content.

¹⁰ Freshfields Bruckhaus Deringer (18/06/07), *ITV plc Statement of case on competition issues (non-confidential version)*, London: Freshfields Bruckhaus Deringer (main party submission to Competition Commission on behalf of ITV plc)

¹¹ Ofcom (March 2008), *The Communications Market: Digital Progress Report, Digital TV Q4,2007*

Digital channels would be able to invest more in UK original programming if they were available on terrestrial

50. Ofcom notes that a number of digital channels do make a contribution to PSB purposes, albeit with limited investment in UK content. As the table below demonstrates, almost all of the services which Ofcom points to are **not available on DTT during peak times**. Interestingly, two services **which do produce** significant UK original content, Sky News and Sky Sports News, are currently available on DTT, although they are under threat of replacement by more lucrative pay-TV services.

Genre	Service	Description	Available FTA on DTT?
NEWS	Sky News	News & current affairs	Yes (subject to consultation)
	EuroNews	News & current affairs	No
	Al Jazeera	World news / Middle East focus	No
	CNBC Europe	Business News	No
	CNN International	World news / US focus	No
SPORT	British Eurosport	Sports coverage	No
	Sentanta Sports News	Sports news	No
	Sky Sports News	Sports news	Yes (subject to consultation)
FACTUAL / NATURE	Discovery	Nature / science	No
	History Channel	History	No
	National Geographic	Nature / science	No
	Biography Channel	History	No
	Community Channel	Social action / charities	Yes (limited hours)
	Teachers TV	Teachers / parents educational	Yes (limited hours)
	DMAX	Technology, DIY, travel	No (but FTA in Germany)
	Current TV	Community Access	No
ARTS, CULTURE, FILM	Sky Arts	Arts	No
	Propeller	New UK independent producers	No
LOCAL TV	Channel M	Local TV	No (Manchester analogue licence expires at DSO)
CHILDREN AND TEENS	Nickelodeon	Children's	No (some Nick Jr content shown on "TMF" music channel)
	Disney	Children's	No (but FTA in Germany)
	Trouble	Older children's / teens	No (part of Virgin Media portfolio)
ETHNIC / NICHE ENTERTAINMENT	RTE International	Irish public service programming	No (RTE available in many analogue homes in NI)
	OBETV	Black and ethnic minorities	No
	MATV	Asian programming	No (Leicester analogue licence expires at DSO)
	Horse and Country	Countryside	No

The entire business model of the commercial PSBs rests upon Freeview

51. The above list is provided for illustrative purposes only. However, logic suggests that if any of the above channels were able to secure Freeview capacity, they might have a greater reach and impact and, potentially, be in a position to invest more in UK original production. Given these and other digital channels are competing on such an uneven playing field, it is grossly misleading for Ofcom to analyse their investment in UK original content without consideration of the platforms they are carried on.
52. Ofcom is aware that Channel 4's share of viewing is highest in analogue terrestrial homes with access to only five channels (14.5 per cent), and lowest in cab/sat homes having hundreds of channels available (6.7 per cent). If Channel 4 was restricted to cab/sat, with no Freeview carriage and no EPG priority status, it too would struggle to invest in UK original content. The entire business model of the commercial PSB operators can be seen to depend upon continued access to Freeview.

53. Access to DTT is similarly critical to the success of new FTA services. The ability of FTA broadcasters to maintain investment in original UK production depends on their audience share and related advertising income. For any advertiser-funded business model, increasing penetration to include all UK households would enable it to significantly enhance its investment in original UK production.

Digital channels would grow their original production if granted equivalent privileges to PSB operators

54. The question facing Ofcom is not the current contribution made to PSB by digital channels, but the potential contribution if these channels were granted equivalent privileges to the incumbent PSB operators. Broadcasting is a fixed cost industry. Post-DSO, almost all homes are likely to have access to DTT on at least one set, particularly as IDTVs replace sets with analogue tuners. As the OFT states:

“By 2012 it is expected all TV broadcasting will be digital and DTT is forecast to be the default platform by that point. Accordingly channels will want to be on DTT.”¹²

55. Teachers TV operates on an annual budget of under £20m, but produces content comparable to network standards. Unlike most digital channels, Teachers TV’s future is secured as a result of direct Government funding. Even so, its reach and impact would be infinitely greater if it were available on prime time DTT.
56. Please also see the earlier response to Q.3(i)

Section 5. Prospects for the future delivery of public service content

5i) Do you agree with Ofcom’s assessment of the implications of different economic scenarios for the UK TV market for the future prospects for delivery of the public purposes?

For the foreseeable future there will be an annual spectrum subsidy in UK commercial TV of at least £300m per annum

57. It is reported that the current purchase price of a single video stream on Freeview is in the region of £12m per annum and rising. It is difficult to estimate how much of this value reflects spectrum scarcity and how much a fair cost for managed transmission services. However, it is reasonable to ‘guestimate’ that managed transmission services should cost no more than £2m for a video stream on a commercial multiplex, assuming access to DTT transmitter stations is regulated.
58. Ofcom has stated that all of the existing six Freeview multiplexes will be required to broadcast at 64QAM post-DSO. Although not all capacity will be used for video services, one multiplex is technically capable of providing up to 10 SD video streams. If each video streams possesses an intrinsic spectrum value of £10m, then the implicit subsidy gifted to just one multiplex is circa £100m per annum. Across all six Freeview multiplexes, the implicit spectrum subsidy is probably in the region of £600m per annum. For comparative purposes, the annual profits of BBC Worldwide are around £111m.
59. Two of the six Freeview multiplexes are currently controlled by the BBC. If these multiplexes are ignored, then the annual spectrum subsidy provided to Freeview’s commercial operators (ITV, C4 and NGW) is £400m. This is broadly in line with the value of the analogue spectrum provided to ITV, C4/S4C and Five which was valued by Ofcom at circa £430m in 2004. Even assuming a 25 per cent discount to £400m is applied as a margin of error, then there is an

¹² Office of Fair Trading (August 2005), *Anticipated acquisition by ITV plc of SDN Limited*, London: OFT

annual spectrum subsidy granted to commercial operators by the Government of £300m per annum.¹³

The OFT has stated the market for Freeview capacity is defective

60. The value of Freeview capacity reflects demand and supply which may change over time.¹⁴ Ofcom committed in its 2007 Annual Plan to investigate the wholesale market for DTT capacity, although this investigation was dropped. The Office of Fair Trading (OFT) has already concluded there is no competitive functioning market in DTT capacity.
61. The OFT noted in its assessment of the acquisition of SDN (Multiplex 2) by ITV plc dated 15 August 2005:
- “...it appears that ITV and Crown Castle would constrain each other little in the sale of multiplex capacity. The use of long term contracts and the differing dates for licence renewal means that there is a gap of several years between when ITV and Crown Castle capacity becomes available. If, in the absence of temporal competition, a customer for DTT multiplex capacity attempts to use the threat of switching to ITV in negotiating with Crown Castle (or vice versa) it is unlikely to be an effective threat. Such a customer would likely face substantial costs in switching, as advertising or subscription revenue would be foregone by not having the channel on DTT for a period of years. The presence of such costs are likely to mute any prospects for demand side switching and the level of demand for DTT multiplex capacity means that the supplier is unlikely to face a similar loss of revenue.”¹⁵*
62. The OFT notes the concern that *“when the current contracts for the streams which ITV controls on Multiplex A expire, ITV will then either use the streams for its own channels or allocate them solely for shopping or pay-TV channels that carry very little advertising...”* with a view to increasing the prices ITV is able to charge to advertisers in the market for the supply of TV advertising.
63. In its 2007/08 Annual Plan, Ofcom committed to review *“the rules which promote fair and effective competition in relation to terrestrial multiplexes.”* This review was subsequently cancelled. It may be difficult for Ofcom to reach a conclusion on what forms of public service programming will be undersupplied by the market in the absence of an effective functioning market to begin with.

Ofcom has reached no conclusion on AIP

64. Ofcom cannot accurately predict the extent to which spectrum subsidies will diminish in the long-term for a simple reason – it has not yet decided. Ofcom has said it may seek to apply Administered Incentive Pricing (AIP) to the six Freeview multiplexes from the end of 2014 (i.e. 2015). This is more than six years away. What is more, Ofcom have said it is possible it will not apply AIP in full (or at all) to some or all of the Freeview multiplexes.
65. Demonstrating an unfortunate lack of joined-up thinking, Ofcom’s decision on AIP will be taken in a separate consultation exercise prior to 2014. There are a number of credible alternative policy options to AIP. For example, one option might be to impose public service obligations on multiplex operators equivalent to the value of AIP. Another option might be to re-auction the spectrum currently used by commercial Freeview multiplexes with PSB obligations attached. Economic theory suggests the value paid at auction would reflect the value of the spectrum reduced by the cost of providing the PSB obligations.

¹³ Ofcom’s assumption that the value of capacity gifted to ITV licensees is in the order of £45m per annum would appear to be broadly in line with these estimates (although Ofcom fails to explain how its assumptions are arrived at arguing that DTT capacity gifted to C4 has a lower intrinsic value to identical capacity gifted to ITV).

¹⁴ Ofcom has not produced any analysis to suggest the value of Freeview capacity is about to fall. Ofcom has decided to release DDR spectrum to the market on an application and technology neutral basis. Even if part of this spectrum is used for DTT it will have no universal service obligations (so could fail to reach many citizens) and no requirement to provide access to socially valuable services. Under Ofcom’s proposals, this spectrum could be acquired by a network of shopping channels or even by the incumbent Freeview operators seeking to protect their market share.

¹⁵ Office of Fair Trading (August 2005), *Anticipated acquisition by ITV plc of SDN Limited*, London: OFT

66. It is impossible for anyone to know what level of spectrum subsidy will exist in the future, since this will rest on the outcome of an entirely unconnected consultation process as well as developments in the wider market. For the foreseeable future, it seems likely there will be a continuing spectrum subsidy in the region of £300m per annum. Regardless as to whether or not AIP is ever applied, it would be extraordinary for Ofcom to not seek to ensure that the existing Freeview spectrum assignments are used to maximise delivery of public purposes.

The challenge for Ofcom and Government is to ensure continuing spectrum subsidies are properly captured to achieve public purposes

67. If Ofcom is failing to capture spectrum subsidy and ensure it is used to achieve public purposes then this is, in truth, a regulatory failure rather than a market failure – existing regulations are not effective in ensuring the purposes of the subsidy are being achieved. In this case, what is needed is more effective regulation (not necessarily more subsidy).
68. If the value of gifted spectrum is enjoyed by a multiplex operator, rather than one channel operator, then it is impossible to place excessive programming obligations on one video stream. Nevertheless, it is realistic and achievable to spread programming obligations across the full range of video streams carried on a multiplex. This might be achieved by requiring a multiplex operator to reserve capacity for a diverse range of dedicated digital channels e.g. news, factual, local, educational, children's etc.
69. In the past, a diverse range of programme genres may have been supplied by just one channel. Today, it is realistic and sensible to assume that the ongoing implicit spectrum subsidy is channelled effectively to enable a wide range of programme genres are supplied across one or more multiplexes.

Ofcom's distinction between "public service" and "commercial" multiplexes is artificial and misleading

70. Despite Ofcom's attempts to portray three of the six Freeview multiplexes as "commercial", there have always been positive programming and other licensing conditions placed on **all** Freeview multiplexes. In legislation, there is no distinction between "public service" and "commercial" multiplexes – the distinction made by Ofcom is artificial, false and misleading. All six multiplexes are using spectrum gifted by the Government for the delivery of public purposes.
71. Ofcom's core broadcasting duty is to ensure all citizens have access to a wide variety of high quality programming. The principal regulatory resource at Ofcom's disposal to meet this obligation is the licensing of DTT multiplexes with reserved frequencies. If public service broadcasting is in retreat it is not entirely because of a lack of regulatory resource available to the regulator and Government. At least in part, it is because of a surprising unwillingness demonstrated by Ofcom and Government to ensure continuing spectrum subsidy is captured in order to deliver public purposes.

The Internet complements, rather than replaces traditional TV

72. It is irrelevant and unhelpful for the consultation document to note that central government spends £70-90 million annually in on-line services, with local and devolved government spending another £45-55 million. The vast majority of this expenditure is not invested in content intended to fulfil the purposes and characteristics of PSB. Ofcom might as well quantify the amount of money the government invests in printed materials – the Internet is only another form of publishing.
73. Ofcom's priority must be to ensure digital switchover enhances the plurality of programme services meeting public purposes. This can only be achieved by carefully planning the programme services carried on the DTT platform, actively intervening to ensure "*calculated*" variety is provided to citizens, in line with Ofcom's statutory duties.

5ii) Do you agree with Ofcom's analysis of the costs and benefits of PSB status?

The switch from analogue to digital means the value of spectrum subsidies is switching from analogue channel operators to Freeview multiplex operators

74. United for Local Television disagrees with the assertion that the benefits of PSB status should remain confined to a small number of incumbent broadcasters, selected via an accident of history.
75. It is common sense that Ofcom must ensure it does not place programming obligations on any single broadcaster in excess of the value of the regulatory resource gifted to that broadcaster. However, it does not follow that because the market value of one DTT video stream is much lower than one analogue video stream, that there is less subsidy in the broadcasting system overall. All that has occurred is that the subsidy previously gifted to one analogue channel is more evenly spread across the potential 60 video streams which could potentially access this spectrum post-DSO.¹⁶
76. If Ofcom and Government intend to purely rely on ITV1, C4, C5 and S4C to fulfil citizen demand for PSB plurality then, obviously, there is a significant risk of under supply. However, this could not have possibly been the intention when the Government pursued its policy of advancing DSO. The DSO policy must have been founded on the assumption that a wide range of services meeting PSB purposes would be provided across the six Freeview multiplexes.

It is clear the market will not deliver PSB without intervention – that is why Ofcom was granted a wide range of statutory powers

77. The consultation document states:

“In linear television and radio, the evidence does not so far bear out the proposition that the market left to itself will deliver UK-originated, high quality public service programming on the scale UK audiences have come to expect.”

78. This statement is not contentious, although it is difficult to reconcile with the policy conclusions reached by Ofcom in its DDR.¹⁷ What is so extraordinary is that Ofcom (and Government) should fail to understand they already have been granted powers by Parliament to ensure the market is not “left to itself”. They simply have chosen not to use them. In television, the opportunities for new public service content providers to enter the DTT platform have been deliberately curtailed. Policy decision taken by Ofcom and Government include the gifting of existing DTT capacity to non-PSB services (such as Five US) and the proposal to auction all DDR spectrum to the highest bidder, save for a time-limited protection for PMSE users.

A gifted video stream would be of significant value to original UK service providers

79. The amount of UHF spectrum gifted to Freeview by the Government is more than double the amount of spectrum that will be “cleared” for the so-called digital dividend. It is clear that access to this Freeview resource would be extremely beneficial to new digital channels.
80. Ofcom suggests Teachers TV is a fine example of contestable funding. This may be true. However, Teachers TV exists on a budget of under £20m per annum, required to cover all programming, transmission and management costs. If Teachers TV were to be granted a UK-wide 24-hour video stream on Freeview, valued at £10m per annum, this would increase the value of its effective budget by 50 per cent. This is not an insignificant amount for any educational channel.

¹⁶ Assuming six DVB-T standard definition multiplexes at 64QAM, operating at full capacity (although currently 10 per cent of capacity is reserved for non-TV services)

¹⁷Ofcom (December 2007), *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, London: Ofcom

81. Channel 4 has decided to establish a £10m pilot fund to support original content for older children / teenagers. This is roughly the same value of a video stream on Freeview (and potentially might be worth even more linked to other regulatory resources such as EPG priority status).

All evidence suggests Freeview will remain core to universal PSB provision

82. The consultation suggests the development of broadband TV platforms could be very rapid, or very slow, or something in between. It is conceivable that one day there will be no value in the Freeview platform. However, it is also conceivable that (by then) new models to monetise public service content online will have been devised such as targeted advertising. At least part of the future success of broadband platforms will be determined by the development of NGA networks and public policy towards universal provision.
83. If (contrary to current evidence) the value of DTT capacity is set to depreciate rapidly, then the opportunity cost of reserving part of this capacity for new public services is obviously negligible. On the other hand, if DTT remains core to the delivery of PSB then Ofcom and Government have a duty to intervene to ensure PSB programmes are universally available, free to air, on this platform.
84. Ofcom describes nations and regions programming and children's programming as "very unprofitable". This analysis is questioned by this submission in its response to sections 9 and 10 of the consultation document.

Section 6. Meeting audience needs in a digital age

6i) Do you agree with Ofcom's vision for public service content?

PSB must be universal

85. United for Local Television does not agree that a "more nuanced" understanding of the principle of "universal availability of free-to-view content" is desirable. Unless Ofcom is suggesting that some viewers are denied access to PSB, then what is required is exactly the same understanding as already exists.

Ofcom's general duties require it to consider public service television beyond the incumbent PSB operators

86. Ofcom's General Duties require it to have regard for, inter alia:
- the desirability of promoting the fulfillment of the purposes of public service television broadcasting in the United Kingdom;
 - the desirability of promoting competition in relevant markets;
 - the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
 - the needs of persons with disabilities, of the elderly and of those on low incomes;
 - the desirability of preventing crime and disorder;
 - the opinions of consumers in relevant markets and of members of the public generally; and
 - the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
87. None of these duties are restricted to the five principal broadcasters granted formal "PSB" status.¹⁸ Ofcom has a much wider duty – to promote "the fulfillment of the purposes of public service television".

¹⁸ i.e. the BBC, Channel 3, Channel 4, Channel 5, S4C and Teletext – in this submission usually referred to as the "incumbent PSB" operators

Ofcom must never lose sight of its statutory duties

88. Ofcom has a statutory duty to seek to secure:

"...the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests".

89. The main statutory duties Ofcom must implement in relation to broadcasting are:

- **Availability throughout the UK** – the duty to secure universal coverage.
- **A wide range** – the requirement to secure a wide range of channels, not just sister channels for repeats, time-shifting and 'spin-offs' from a cartel of incumbent operators. For the avoidance of doubt, restricting universal DTT capacity to those who previously monopolised analogue terrestrial does not constitute facilitating a wide range of channels. A failure to supply a plurality of core public service genres such as children's programming or local news would represent a dereliction of Ofcom's statutory duty to secure a "wide range".
- **Of high quality** – allowing commercial PSB operators to only provide 'tokenistic' public service programmes would represent a dereliction of Ofcom's statutory duty to secure "high quality".
- **Calculated to appeal to a variety of tastes and interests** – the requirement to ensure all main tastes and interests are catered for. It is not for Ofcom to leave variety to chance – it is required to ensure its interventions are "**calculated**" to secure this core objective. For the avoidance of doubt, failing to take action or intervene in the market to secure local TV or children's channels, where demanded, would be a dereliction of Ofcom's statutory duty to secure "**calculated**" variety.

The current dominance over the DTT platform exercised by the incumbent PSB operators acts against the public interest

90. The monopolisation of universal DTT capacity by a handful of broadcasters cannot be guaranteed to achieve any of Ofcom's core broadcasting objectives. The current manner in which the UK's most valuable spectrum is 'divvied up' between a cartel of incumbent operators reflects a surprisingly cavalier approach by Ofcom and Government to the promotion of fair and effective competition or the achievement of PSB purposes.

A new vision for public service is required

91. Market failure in broadcasting is impossible to quantify with any degree of certainty. It is not possible to know how much factual or other PSB content would be supplied in a perfect market, in the absence of market failure. Perhaps for this reason, there is a general consensus that public service broadcasting in the UK should go beyond market failure, enhancing the supply of high quality content that "*educates, informs and entertains*".

92. It may not be appropriate forever to require commercial licensees such as Channel 3 and Channel 5 to meet specific quotas across a wide range of genres. Instead, it may be more appropriate to gift capacity on Freeview to genre-specific channels. Where there is market failure, genre-specific channels are more likely to be able to fulfil a requirement for compelling programming. Quotas tend to lead to PSB genres being relegated to the outskirts of a schedule (or scheduled against EastEnders) as broadcasters comply purely in order to 'tick the box'.

93. A new vision, with PSB provided across a wide range of digital channels, is radical and new to many citizens, as well as deeply unsettling for incumbent institutions. However, it is also inevitable. It is not realistic or practical to disproportionately place all commercial PSB obligations with just a handful of commercial broadcasters, all facing diminishing revenues.

Ofcom and Government essentially face two choices

94. The market for broadcasting is not comparable to the market for magazine publishing. Even following DSO, capacity on the number 1 broadcasting platform will remain severely constrained. Barriers of entry remain high. The question facing Ofcom and Government is what form of intervention is most appropriate to meet the demand for PSB programming on the universal FTA platforms outside of the BBC.
95. Ofcom has argued that, instead of intervening directly in the assignment of DTT multiplex capacity the Government could provide direct grants to socially-valuable service providers to acquire capacity in the market. This suggestion appears perverse.¹⁹
96. Direct funding requires UK citizens to pay for spectrum not once, but twice – firstly by gifting spectrum to a commercial operator at below its true market value and then to buy it back off the same operator at a premium to what they would sell it for in the open market.

There is only one party which can possibly benefit from direct funding, rather than indirect funding for multiplex capacity

97. To use public funds to inflate the supernormal profits of Freeview multiplex operators does not, prima facie, appear to be a prudent or sensible use of taxpayer resource. The spectrum used to provide Freeview is not the property of the multiplex operators. It is a gift of nature which equally belongs to everyone and no one. It is the responsibility of Ofcom and Government to ensure this scarce resource is used to maximise public welfare and is not misappropriated to generate supernormal profits for commercial operators.

It is not clear Ofcom has offered any vision for the future of PSB

98. Ofcom has not set out a vision for the future of PSB. Ofcom has set out a collection of statements, such as its desire to see:

“news content which reflect the issues and needs of English audiences at a regional and, where possible, local level”

99. This does not constitute a “vision”. Few organisations would adopt a vision statement that commits them to deliver local news “*where possible*”. Why would it not be possible? There is no possibility or impossibility in the provision of any PSB genres, it is merely a question of political will and judgement. The very purpose of intervention for PSB is to address market failure.
100. Ofcom’s so-called “vision” does not even make reference to the desirability of local news outside of England. Ofcom appears to have no clear vision, rather deference to the status quo. Ofcom appears dismissive of its own DDR research showing local TV is the most demanded new application by consumers. The UK public clearly has a very different vision of the future of local programming from the insulting and derisory “vision” offered by Ofcom.

6ii) How important are plurality and competition for quality in delivering the purposes of public service broadcasting, and in what areas?

Plurality and competition are encouraged by opening up platforms to new entrants

101. The UK Government has already gifted spectrum valued at circa £300m per annum for Freeview. Unless this spectrum is opened up to new public service entrants, there is a serious risk that Ofcom will find diminishing plurality and competition in PSB genres.

¹⁹ Direct subsidies to acquire land-based resources such as spectrum have a history of inflating the prices of these resources, distorting the market. Ricardo’s law of economic rent suggests the price of land as a factor of production will inflate to take account of subsidies available. *Principles of Political Economy and Taxation*, David Ricardo, first edition published 1817, suggests subsidies can be expected to result in a surplus profit for a landlord (a multiplex operator) rather than being passed on to benefit tenants (service providers), and suggests why such incentives may therefore prove ineffective in the absence of regulatory control.

There is a rationale for plurality in news provision which does not apply to other genres

102. A plurality of providers does **not ensure** either a plurality of viewpoints or even a plurality of news sources e.g. two UK-wide TV channels can have different owners but ultimately obtain all of their news from the same newswires and/or programme-makers.
103. There is a particular rationale for plurality **and** diversity in the provision of news and current affairs which does not apply to entertainment or other programme genres. In news and current affairs, especially political debate and discussion, there is an exceptional case for plurality protection. If the BBC is strong in UK TV news provision, it should be required to act with extreme caution before expanding into the delicate market for local news provision. It is important that no single organisation (press, radio, TV or Internet) is able to dominate the supply of all news for UK citizens. If the BBC aggressively enters a small and nascent news market then, far from enhancing plurality, the risk is it will be detracting from it.

In all genres, there is an argument for ensuring commercial operators are able to compete effectively with the BBC

104. Competition is in the interests of viewers, advertisers and producers although competition does not always deliver “quality” as defined by Ofcom – it can also deliver imports, sensationalism and violent programmes targeting even the youngest children (e.g. Power Rangers). The question is not whether or not competition should be restricted but, rather, ensuring a window exists for PSB content within the wider market.
105. In all genres, it is vital to ensure that commercial operators are able to compete effectively against the BBC. Genuine market competition is not achieved by rearranging funding between state-owned broadcasters so that one State broadcaster can compete against another State broadcaster. True market competition requires platforms to be open so that new entrants are able to compete effectively on the main platforms against the incumbent operators.

Plurality does not guarantee diversity

106. A plurality of service providers, all offering broadly the same news agenda, does not deliver a diversity of voice. Genuine choice for the viewer is achieved by delivering a diversity of citizens’ voices, including direct access by citizens to airtime to make their own programmes. At a time when tensions in many communities are evident, including gang violence, concerns about the impact of immigration and racial intolerance, the case for a new channel dedicated to citizens’ voices could hardly be greater.
107. A channel providing a voice for individuals, community groups, theatres, museums, public services, imams, priests, councillors and MPs would enhance democratic engagement and debate on issues of relevance and concern within a community. The PSB Review should focus on how to enhance diversity of voice, rather than purely the narrow issue of protecting plurality.

Plurality may not be desirable in every programme genre

108. The consultation focuses on plurality but this is not a policy objective worthy of elevation to the extent it should be delivered at any cost, including potential damage to the BBC itself. During the so-called, ‘golden age’ of TV, plurality was very restricted. ITV has always been accused of ‘dumbing down’ TV ever since it introduced quiz and variety shows to UK viewers. A plurality of sources (TV, radio, online, print) may be a greater guarantee of quality and diversity than plurality in every single niche linear TV programme genre. If UK originated programming is of a low-standard then viewing can generally be expected to migrate to non-UK programming or other programme genres.
109. Digital TV brings the opportunity for niche genres (classical music, extreme sports, fashion, local news) to be identified and a market gap to be served by one or more new entrants. As the market for digital TV develops, the **threat** of a new entrant may be all that is required to

encourage an incumbent service provider to deliver a consistent high quality of service to viewers.

110. It may not be realistic to suggest there is room for more than one significant player in every niche programme genre in the short-term. Ofcom's DDR research suggested the demand for local TV is largely satisfied by just **one** local TV channel. It may be preferable, at least in the initial years of a new service, for there to be one strong successful provider of local TV in any given market. This could reflect local consortia and local interests rather than being centrally controlled. It could be a serious mistake to encourage the market to fragment artificially, providing more services than justified by demand.
111. It is ironic that Ofcom's first and only dedicated consultation on local TV has been prompted by the BBC Trust. This consultation will take place before Ofcom has conducted any review of the regulatory resources (if any) which may be appropriate to support non-BBC local TV provision. United for Local Television has a number of serious concerns about the BBC's proposed expansion into local video news. It is vital the forthcoming Market Impact Assessment and Public Value Test on the BBC's proposals give weight to the delicate nature of local media markets, in which intervention could precipitate (rather than correct) market failure.

6iii) In maximising reach and impact of public service content in the future, what roles can different platforms and services play?

The television production model is changing

112. Traditionally, filming of a documentary would require talent and crew (camera/sound/lighting/make-up) supported by directors and assistants prior to the post-production (editing/graphics). Today, programme-makers are shooting and editing their own documentaries to rival the quality of traditional productions and often at a cost of only a few thousand pounds.

The limited reach and impact of many digital channels reflect their distribution platforms

113. New digital channels, such as Teachers TV and the Community Channel, are originating public service content at a fraction of the budgets of the major networks. So why are these new networks not making a greater impact on the audience? The answer often lies not in their production models, which are highly efficient, but in the distribution models, which are flawed.
114. Ofcom acknowledges that there may be a case for subsidising the wider distribution of dedicated digital channels, stating:

"One possibility would be to enhance their impact by subsidising the wider distribution of these channels, if the public benefits of doing so outweighed the costs."

115. Surprisingly, Ofcom fails to take this statement to its natural conclusion. The Government already subsidises the distribution of Freeview with gifted spectrum. New dedicated digital channels on DTT would not necessarily require additional subsidy but, rather, existing subsidy to be managed efficiently.

There is worldwide experience of the popularity of dedicated genre channels

116. In the consultation, Ofcom states:

"The contribution of certain digital channels to programming that meets public purposes – Sky News, Discovery and so on – is also constrained by those services' relatively limited reach."

117. The limited reach of Sky News reflects the reality that there is only limited demand for 24 hour national news channels. This does not reflect the ineffectiveness of dedicated digital channels to meet public purposes. Ofcom's DDR research demonstrated the high demand for a

dedicated local TV channel on Freeview. More recently, Ofcom's PSB research demonstrated support for a dedicated children's channel on Freeview.

118. Dedicated local TV and children's channels are seen to be successful the world over. Whilst it is indisputable that children are spending time online, there is no evidence that they will search out and use a new children's channel online and, almost certainly, not in greater numbers than any new linear TV service. Similarly, it is entirely implausible that a local TV service on the Internet would have a greater reach or impact than a local TV service on DTT. The most effective TV services on the Internet (e.g. the BBC IPlayer) are linked to established broadcasters who are able to use their traditional platforms to drive traffic to their new media offerings.

DTT is core to the delivery of public service broadcasting

119. Nobody disputes that broadband will play an increasingly important role in the distribution of interactive video and other content. However, broadband is a pay platform. A typical basic broadband package costs in the region of £15 per month, in addition to a basic telephone line. In that sense, broadband TV is no different from Sky or Virgin Media (indeed, both Sky and Virgin offer their own broadband packages).
120. By definition, public service broadcasting must be available to all citizens, free at the point of use. The Freeview platform was devised in order to ensure that all UK citizens have a basic tier of content, universally available. Freeview is the UK's number one TV platform. **If a TV service is not available on Freeview at all, it may legitimately claim to have some PSB characteristics, but it is not PSB.**

6iv) Do you agree that the existing model for delivering public service broadcasting will not be sufficient to meet changing needs in future?

Dedicated digital channels will spread PSB genres across a wide range of multichannels

121. At a time when audiences are fragmenting, it is futile to attempt to cling on to the analogue PSB model. It appears inevitable that repeats will increase across the commercial PSB channels to allow greater opportunities for viewers to catch programmes. Time shifting and video on demand will also provide vital secondary opportunities to view content.
122. The inevitable consequence of moving from only 5 terrestrial channels to up to 60 terrestrial channels, is that PSB content will need to be less concentrated. Dedicated digital channels will need to emerge focused on different PSB genres. Gaining access to DTT will be critical to the success of new FTA services. If new public service entrants are denied access to DTT, whether due to market or regulatory failure, then the overall level of PSB content can be expected to decline post-DSO.

Ofcom is in danger of recreating the analogue monopoly on DTT

123. It is in the interests of the commercial PSBs to downplay the benefits of PSB status at the same time as seeking to cling on to these same benefits.
124. Ofcom's analysis demonstrates how the UK is in grave danger of recreating the analogue monopoly on DTT. Approximately 90 per cent of all viewing in DTT-only homes is to the incumbent PSB's or their portfolio channels. The figure is almost identical in both ABC1 and C2DE homes (90.8 per cent in ABC1 against 89.6 per cent in C2DE).
125. It is inevitable that the lower number of channels in DTT homes will lead to a higher viewing share for the PSB incumbents. However, the difference between pay-TV and FTA homes is so stark it suggests a concerning digital divide, as the figures below demonstrate.

Viewing shares by socio-economic group, 2007²⁰

Platform	5 PSB channels	Portfolio channels	All other channels	Total PSB portfolio
Freeview homes ABC 1	72.9 per cent	17.9 per cent	9.3 per cent	90.8 per cent
Freeview homes C2DE	70.9 per cent	18.7 per cent	10.4 per cent	89.6 per cent
Cable and satellite homes ABC1	49.4 per cent	10.5 per cent	40.1 per cent	59.9 per cent
Cable and satellite homes C2DE	48.3 per cent	10.7 per cent	41 per cent	59.0 per cent

126. It is inconceivable that, post-DSO, a viewer will not manage to identify specialist TV channels (e.g. a dedicated children's or local TV service) so long as they are awarded due prominence on the EPG. There would appear to be an overwhelming case for opening up the DTT platform to new entrants serving the purposes and characteristics of PSB.

If your aerial points to a relay station, all English-language channels available are provided by just four main service providers

127. If the incumbent PSBs retain their existing DTT assignments, a terrestrial viewer whose aerial points to any of the UK's 1,000+ relays will receive no additional plurality of voices post-DSO. The only three universal multiplexes available at these relays will be monopolised by the same four broadcasters who previously monopolised all analogue spectrum.²¹ The diversity of broadcasting outlets and voices which is an inherent feature of a modern liberal democracy will not be enhanced by the DSO process for these viewers.²²

Section 7. Future models for funding and providing public service content**7i) What are your views of the high-level options for funding public service broadcasting in future?****Direct funding potentially causes more problems than indirect funding**

128. There are, in practice, only two forms of funding: direct or indirect. Whether direct funding should come from general taxation, the lottery, the licence fee, industry levies or AIP is a matter for Government and Parliament. United for Local Television is not opposed, in principle, to the use of direct funding to protect and enhance PSB provision beyond the BBC. However, it is difficult to see the advantages, in practice, over indirect funding when considering the acquisition of broadcasting capacity to establish dedicated PSB services such as local TV.

129. To encourage long-term investment in new services, direct funding would have to be committed for the same length of term as indirect funding – potentially up to 15 years. No direct funding body could be expected to offer subsidies without approving how these were to be spent. A funding body would have to be certain that any subsidy to a local TV operator would be used to secure suitable Freeview carriage. The funding body would also want to be certain that, at the end of the initial carriage term, it would be possible to enter into a new Freeview carriage agreement in order to avoid the service being lost.

The Teachers TV model for contestable funding cannot be easily replicated in all PSB genres

130. It is not at all clear why Ofcom perceives the award of a contract for direct funding would be more transparent or objective than the award of DTT capacity using established licence award procedures. No business can be expected to bite the hand that feeds it. Regardless of the

²⁰ Source: Figure 18, consultation document

²¹ With the exception of the non-English language services in Wales, Scotland and NI, Ofcom proposes to gift all universal multiplex capacity to the five London-based PSB operators.

²² Some households who currently receive reception from relay sites may be able to receive the three commercial multiplexes if they change their aerials. There are currently no predictions for how many households affected will choose to do this. Still, more than one in ten viewers will only be able to receive the three universal (PSB) multiplexes post-DSO on their main sets. This number will be even higher for secondary sets (e.g. kitchen portables) not connected to a roof-top aerial.

mechanisms put in place to secure the independence of editorial, there is a clear danger that a news-led service dependent on direct funding for its core existence would dance to the tune of its funding body.

131. Ofcom has suggested that Teachers TV is a fine example of contestable funding. This may be the case, but few would deny that Teachers TV delivers a message in line with its government sponsor – the channel exists to promote the implementation of the national curriculum in England. The contract award is an inevitably subjective process which assesses the extent to which the Government perceives its policy objectives will be fulfilled by the tenders received. Further, it is notable that Teachers TV has, to date, struggled to acquire adequate Freeview capacity in what is a severely flawed marketplace.
132. Teachers TV is a niche TV channel targeting teachers, parents and guardians and its impact on the wider broadcasting market is negligible. Teachers TV may be a fine example of Government communications, but its funding model may not be easy to replicate across core PSB genres such as news and current affairs.²³

Direct funding is more complex and expensive than indirect funding

133. There is no effective functioning market in universal Freeview multiplex capacity. The main public service broadcasters are already granted ‘must carry’ status on DTT multiplexes under terms which are regulated. In the absence of similar rights of access for new PSB-based channels then Ofcom’s proposal for direct funding of carriage costs, although intended to be constructive, appears to be of limited value.

Regulatory Assets

133. Ofcom acknowledges that launching new “public service” channels is:

“Possible in the existing statutory framework”

However, Ofcom suggests that the:

“value is likely to be limited”.

134. It is difficult to know what Ofcom means by this statement since the value of any funding is likely to be limited, regardless of the source. The value of commercial PSB provision in the UK has always been significantly lower than BBC provision, reflecting the requirement on commercial operators to limit their use of public resources. It could well be that some direct funding is required to supplement BBC provision. However, Ofcom should make effective use of the £300m of subsidy already in the DTT system before appealing to the Government for additional funding. If the majority of this subsidy was able to be captured then, alongside the PSB content already provided by non-PSB services, any short-term funding crisis in PSB provision might be expected to be averted.

New PSB services would not require primary legislation

135. The Government and Ofcom are free to impose new licence conditions on any Freeview multiplexes. This could include a requirement to reserve capacity for local TV and/or other dedicated digital channels. This does not necessarily require primary legislation. The Secretary of State for Culture Media and Sport has the power to make an order under Section 243 of the Communications Act 2003. Such an order may specify modifications to sections 7 to 16 and sections 18 and 19 of the Broadcasting Act 1996. The requirement to obtain a multiplex operators’ consent for new service obligations under section 12(2) of the Broadcasting Act

²³ For example, there is frequently a tension between existing local newspapers and local authorities. It is not uncommon to hear of local authorities threatening to withdraw their own advertising spend from local newspapers due to dissatisfaction with editorial coverage. Many local newspapers are in a strong position to resist such threats whilst they are in control of their own destiny – this would not be the case if a local newspaper’s entire survival depended upon a public funding contract renewable at regular intervals.

1996 is something that falls within the range of modification measures that may be covered by such an order.

136. These powers are known to Ofcom who, by way of example, have recommended the Secretary of State use them to enable the Irish language service, TG4, to gain access to Freeview capacity in Northern Ireland. The same powers could be used to enable local TV to gain reserved access to Freeview in a similar manner. It is not necessary to confer formal PSB status on a dedicated digital channel for them to benefit from reserved access to DTT capacity.

State aid concerns

137. In its DDR statement, Ofcom appears to have reached the conclusion that government agencies should subsidise the acquisition of DDR spectrum but puts forward this policy without giving any consideration to the state aid implications.²⁴ Inevitably any commercial operator denied access to spectrum by a subsidised competitor would complain directly to the European Commission.
138. Ofcom is aware that, under EU state aid rules, direct grants for transmission costs must be technology-neutral. The European Commission has already ruled a similar plan to that advocated by Ofcom is illegal in the German Land of North Rhine-Westphalia. The Commission recognised the existence of certain market failures, but found that the aid was neither the most appropriate instrument nor necessary to solve these problems.
139. European Commission policy suggests the granting of state aid should always follow a process of clearly identifying the problem to be addressed and of choosing the least distortive means of solving it. According to the EC Competition Policy Newsletter (Spring 2006):

*"The emergence of new market players would certainly benefit consumers. However, there could be **preferable alternatives to state aid** for achieving this goal, **such as regulated access to basic infrastructure and open procedures for the licensing of operators.**"*

Direct funding requires a premium to the opportunity cost

140. The use of direct funding mechanisms to acquire multiplex capacity in the market would be an exceptionally inefficient use of public funds. Far from reflecting the 'opportunity cost' of spectrum used (i.e. the next highest value use), new PSB entrants would be forced to use public funds to pay an absurd premium, seeking to prise multiplex capacity away from incumbent operators on the most onerous of terms.

Ofcom is the only government agency with statutory duties in regard to PSB plurality

141. Ofcom's core broadcasting duty is to secure "a wide range of television and radio services which . . . are both of high quality and calculated to appeal to a variety of tastes and interests".
142. The suggestion that any genre of PSB, including local TV, should be left to the whim of the market, determined by whether or not a service provider can out-bid others for capacity, reflects a shocking departure from Ofcom's statutory duties. In its DDR statement, Ofcom appears to be suggesting that PSB provision should be subsidised by local government or regional development agencies, despite the fact these agencies have no clear statutory remit to invest in these areas. Does Ofcom expect these agencies to cut funding in core areas to fund non-core areas? Such a suggestion can only be viewed as an abdication of Ofcom's own core statutory broadcasting duties to citizens.

²⁴ Ofcom (December 2007), *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, London: Ofcom

Universal coverage could be paid for by the licence fee

143. Universal coverage is a public policy objective of Government and Ofcom. There may be a case for suggesting that the costs of meeting this public policy are met from the licence fee rather than purely by commercial operators.
144. The licence fee is not purely a voluntary levy to pay for BBC services. It is a compulsory tax on all TV users that, once paid, entitles a citizen to benefit from a wide range of TV programming – including programmes funded independently from the licence fee. It could be argued that commercial operators should not be forced to shoulder the entire burden of meeting universal service obligations when the BBC is able to meet this cost from the licence fee. For a commercial operator to pay for carriage on multiple platforms (e.g. Sky, Freesat, cable, Internet) as well as maintaining over 1,000 DTT transmitters reflects a financial cost which may be disproportionate to the benefits.
145. Sharing the licence fee to meet universal service obligations might reduce the pressure on commercial operators without distorting the wider broadcasting market. As a possible alternative, it might be desirable to allow the commercial PSB operators some flexibility in how they achieve universal coverage. For instance, it might be acceptable to suggest that universal provision on free-to-air satellite (Freesat) would justify a modest reduction in the number of DTT transmitters used by Multiplex 2 where these serve exceptionally small populations with limited Freeview coverage.
146. United for Local Television does not hold a definitive view for or against supporting commercial PSB operators with their transmission costs but accepts that this is already under discussion (in the form of switchover support for Channel 4) and could be worthy of further review in phase 2. Such funding need not necessarily come from the licence fee and, if it did, it must be 'ring fenced' so as not to impact on the BBC itself. However, this form of funding support was considered at the time of Charter Renewal and could be considered in line with the BBC's sixth purpose under its Charter – to help build "*digital Britain*".

Potential problems with direct funding

147. The main problems with direct funding include:
- the requirement to establish complex and expensive new institutions;
 - the subjective nature in which funding would have to be allocated;
 - the lack of a genuine effective method to measure the level of funds that would be required and to ensure they are used efficiently for the purposes intended;
 - the inefficiency in using state funds to 'buy back' spectrum at a premium to which it was acquired;
 - the loss of independence from Government;
 - state aid and market impact concerns;
 - the inefficiency of paying commercial broadcasters not just for the cost of producing PSB programming but the 'opportunity cost' of not showing pure commercial content;
 - lack of political acceptability and unintended consequences of increased taxation (e.g. knock-on impact on other parts of the economy);
 - the lack of an effective functioning market in DTT capacity and especially universal capacity – what if suitable capacity cannot be obtained (or renewed) in the market?
148. Ofcom's proposals for direct funding, although not wrong in principle, clearly require much further thought than has been demonstrated to date.

7ii) Are the proposed tests of effectiveness for future models for public service broadcasting the right ones?

Universality is a core policy of the Government

149. It is a fundamental principle that PSB, which is funded by all citizens, should be universally available to all citizens. That is how, for instance, the BBC justifies the use of valuable Freeview capacity for its digital radio and digital text services. If ultimately the service cannot be offered to all citizens, it does not qualify as a true public service.

150. Any attempt by Ofcom to abandon the principle of universality is in direct contradiction of Government policy. In the Government's response to the Cave Review, published 15 October 2002, the Government stated:

*"there is a balance to be struck between ensuring efficient and effective use of spectrum as a scarce and valuable resource and the promotion of plurality, diversity and **universal accessibility** of broadcasting services."*²⁵

151. Professor Martin Cave recognised the need for spectrum to be reserved for the universal delivery of public purposes in his review of radio spectrum management in which he wrote:

*"The review recognises therefore the need for Ministers to retain a strategic power of direction over Ofcom in order to reserve spectrum allocations for identified uses or users to fulfill public policy goals... Most importantly, the Government has powers to ensure that all current **and future** public service broadcasting channels remain **available to all households**, if necessary, by reserving digital multiplex capacity for them."*²⁶

Ofcom's statutory duties

152. Rather than self-manufacture new tests, which have no basis in statute, Ofcom should look to the core duties in broadcasting which have been granted to it by Parliament.

The seven tests for new funding mechanisms

153. Ofcom's proposed tests appear to confuse funding mechanisms with review mechanisms. Effective reviews should be put in place regardless of the forms of public support provided. It could be argued there would be significantly greater PSB programming available on DTT if Ofcom undertook effective reviews of the subsidies provided to existing Freeview operators.

154. In preference to the subjective tests suggested, the eight core criteria Ofcom should consider as priorities when evaluating any new funding mechanisms are:

- **Legal** – Is it legal and compliant with EU state aid rules?
- **Cost-effective** – Is it making the most efficient and effective use of public funds?
- **Universal** – Does it deliver universal access, free at the point of use?
- **Diversity** – Does it increase the diversity of citizens' voices broadcast?
- **New entrants** – Does it develop, rather than inhibit, the development of new entrants in the market, enabling fair and effective competition? Does it actively promote the development of new public services so that, eventually, funding support might even be (partially) withdrawn?
- **Independence** – does it guarantee independence from government and politicians?

²⁵ DTI/HMTreasury (October 2002), *Government Response to the Independent Review of Radio Spectrum Management*

²⁶ Cave, Prof. Martin (2002), *Review of Radio Spectrum Management, An independent review for Department of Trade and Industry and HM Treasury*

155. Following a thorough programme of research and consultation, Ofcom and Government are required to undertake an impact assessment in which only one overriding test can prevail:
- **Cost-benefit analysis** – do the likely benefits outweigh the costs (including risks of regulatory failure)?

Ofcom is alone in considering universality is unimportant

156. These seven tests are much closer to the three tests set out by the Communications Think Tank set up by the DCMS and BERR to consider the future of communications policy. The three core tests the CTT has set itself are to promote policies which:
- open markets;
 - empower consumers and citizens; and
 - provide **universal access** to high quality content.
157. It is concerning that, time and again, universal access features as a key test for the Government, but that Ofcom consistently refuses to acknowledge its statutory duties in this regard.

7iii) Of the four possible models for long term delivery of public service content, which, if any, do you consider the most appropriate and why? Are there any alternative models, or combination of models that could be more appropriate, and why?

DSO offers an opportunity to ensure that PSB provision is broadened – not narrowed

158. United for Local Television does not denigrate the important contribution to PSB that can and should be made by the incumbent PSB operators. Nevertheless, PSB provision should not be confined to just one or two major institutions.
159. A major purpose of DSO is to broaden the supply of PSB programming, enhancing plurality and diversity of voice. If the supply of PSB programming is contracting this can only reflect ineffective regulation of the Freeview multiplexes by Ofcom and Government.

A combination of Model 1 (evolution) and Model 3 (competitive Funding)

160. United for Local Television broadly favours Ofcom's Model 1 (evolution) combined with elements of Model 3 (limited competitive funding) in order to extend and enhance PSB provision.
161. Under this scenario, all of the incumbent PSBs would retain positive programming obligations. This might include a requirement to invest in original UK news and current affairs, drama, comedy, entertainment and out-of-London production. The cost of meeting these obligations would reflect the value of regulatory resources provided to these operators.
162. The most obvious form of "long term transferable" competitive funding is a terrestrial broadcast licence, subject to renewal periods of circa 7-14 years (determined by business modelling and consultation). A requirement to use independent producers, if included as a licence term, is a further method of competitive funding that is established and proven.

Dedicated digital channels would complement the incumbent PSBs

163. There is a compelling case for considering the reservation of access to Freeview for a host of new dedicated digital channels. The actual number of dedicated digital channels, their genres and actual programming obligations would need to be subjected to considerable market research and public consultation. The following are provided as examples only and not necessarily as an exhaustive list:

- **“Channel 6 – Local PSB”** – a citizens’ PSB network with local news, local programming and local advertising (all licences awarded on an area-by-area basis). A channel providing a voice for individual citizens, third sector groups, students, theatres, museums, community representatives, priests, colleges, local agencies, councillors and MPs to enhance engagement on issues of relevance and concern within a community. The channel would have a remit to cover local arts and culture, social issues, business, faith and ethnic issues. Wherever you are in the UK, Channel 6 would be a local channel focused on local news and citizens’ debate.²⁷
- **“Children’s PSB”** – a dedicated PSB service focused on original programming for under-12’s
- **“Teens PSB”** – a dedicated PSB service focused on original programming for 13-19’s (potentially sharing capacity with Children’s PSB e.g. after 5pm)
- **“Art house PSB”** – arts, culture, music, independent / alternative films, production and comedy from UK and around the world
- **“News PSB”** – UK / global news, current affairs, business
- **“Factual PSB”** – documentaries, history, religion
- **“Science / Nature PSB”** – science, nature, technology
- **“Sports PSB”** – sports news and coverage

164. It is possible that, following consultation, new genres would be identified or others subtracted / merged. Although this list is provided for illustrative purposes only, it is clear there would be interest from a wide range of UK and global media operators in providing FTA services in each of these genres, quite apart from potential new entrants.

It is within Ofcom’s power to minimise the risk of regulatory failure

165. Dedicated digital channels may well change and develop over time. Ofcom cannot expect to secure new structures, new business models, new entrants, new programming and new experiments and not expect there to be any examples of failure. A functioning market requires some operators to fail. Without failures, there can be no successes. Ofcom should not hold back from the licensing of digital channels meeting public purposes purely because some may fail over time.
166. No intervention is perfect, but nor is any market. The licensing of dedicated digital channels is a proportionate intervention in response to the risk of market failure in PSB provision. The risk of a serious regulatory failure is much lower in a multi-channel environment than a limited channel environment since a pure commercial market is able to function alongside channels with positive programming obligations. Even so, it is within Ofcom’s power to minimise the risk of regulatory failure by putting in place a flexible licensing regime for new services meeting PSB purposes, allowing them to change and develop over time. It will be vital for Ofcom to monitor and review the PSB obligations of any new services it licenses, just as it reviews the performance of the incumbent PSB operators.

Licence awards process

167. Government should give Ofcom the ability to reserve Freeview capacity for dedicated digital channels meeting PSB purposes, with must-carry status on DTT and cable and due prominence on the EPG.

²⁷ Note: United for Local Television does not necessarily suggest the channel would be branded as “Channel 6” but uses this term to stress the importance of being viewed by policy makers as a sixth public service network with local content commitments.

168. There is no reason, in principle, why franchises could not be awarded as early as 2009. Service providers would be selected by Ofcom via an open licensing process. A major factor in the award process could be commitments to invest in UK original production. By way of example, instead of raising revenue for the Exchequer (which Ofcom is not allowed to consider given its statutory duties), the regulator could seek binding commitments from applicants to invest in content from regional independent producers.
169. If Ofcom decided to licence a dedicated children's channel on Freeview, a major factor in the awards process could be the provision of a binding commitment to invest a fixed level of funds in UK production.
170. Service providers carriage fees should be capped at actual operational costs incurred by multiplex operators (plus any margin agreed by Ofcom). No premium should be chargeable by multiplex operators for the scarcity value of DTT capacity unless and until AIP is imposed on these operators by Ofcom.
171. As a licence condition, all service providers could be required to provide a multi-platform offering including an Internet "catch up" programme service. Careful consideration would need to be given to whether or not the incumbent PSB operators should be allowed to apply for licences. It might defeat the object of reserving capacity for new PSB entrants to enhance the diversity of voice on DTT if the incumbent PSB operators were able to acquire this capacity.

The DTT platform must be opened up to new service providers

172. In aggregate, the value of the spectrum used by the six Freeview multiplexes is comparable to the value of the analogue spectrum provided to the incumbent PSB operators in 2003. Contrary to Ofcom's claim that the inherent subsidy gifted to broadcasters has diminished it is, in reality, as great as ever. What has changed is not the value of the spectrum gifted by Ofcom to broadcasters but, rather, a lack of effective action by the regulator to ensure this subsidy is used to meet the public interest.
173. It is no longer appropriate to put in place an artificial division between "PSB" services granted reserved access to spectrum and all other services. All six Freeview multiplexes were licensed on the premise they would contribute to public purposes. Ofcom should therefore consider different 'tiers' of FTA services:
- Mixed genre PSBs ("*PSBs*") – the incumbent PSB operators with a 'full service' heritage, licensed to continue to provide a 'mixed' schedule.
 - Dedicated Digital Channels ("*DDCs*") – dedicated genre channels (e.g. local TV, news, children's, factual), licensed as FTA services with positive programming obligations in one particular genre. DDCs could be granted reserved access to DTT capacity (at regulated prices) following a competitive award process.
 - Non-PSB services – all other digital channels could be released from positive programming obligations, allowing platform providers to release capacity to the market in a fair, open and non-discriminatory manner.
174. Both PSBs and DDCs should be required to obtain universal coverage but they may be granted a degree of flexibility in how they achieve this. For instance, they could be carried on a universal DTT multiplex (service 98.5 per cent of the UK population) **or** on a commercial DTT multiplex (90+ per cent coverage) but supplemented by carriage on a complementary platform such as FTA satellite (Freesat). It is likely most households would have DTT as a 'default' platform, but viewers who wish to upgrade to receive the 'full' bouquet of FTA services on Freesat would be able to do so for a one-off sum.

The real opportunity cost of reserving a video stream for citizens' TV channels

175. The notion that a spectrum subsidy of £10m per annum would make no material difference to the financial viability of a new public service network is patently absurd. By way of example, £10m split equally between a local TV network of (say) 50 channels is £200,000 per channel per annum. This could easily be the difference between profit and loss for an operator of a local channel in a small market, perhaps operating with a local budget of circa £500,000 per annum.
176. ITV plc paid ITN £37m for its news and weather in 2007. If ITN had been able to enjoy reserved access to Freeview, with free spectrum, it may not have been forced to close its news channel to make way for more commercial ITV services. £10m per annum represents more than a quarter of the entire ITV1 budget for national news production.
177. In return for any spectrum subsidy, a new FTA provider would be expected to commit to provide public service programming at least to the value of the resource provided. It could be argued that the real value of a Freeview channel is substantially lower than £10m and that this price is greatly inflated by the existence of a near-monopoly supplier in the market. This may be true. If so, then the real opportunity cost of reserving a Freeview channel for any new public service broadcasters is even lower than Ofcom has been suggesting.

Ofcom must show courage and conviction

178. New high-quality FTA channels are likely to face competition from established interests: the incumbent PSB operators seeking to protect their market share and major commercial rivals (such as Sky and Virgin Media) with an interest in reducing the attractiveness of the FTA platform. Further, all Freeview multiplex operators can be expected to object to any attempt to reduce the supernormal profits generated from their exploitation of gifted spectrum assignments. Ofcom will need to show courage and conviction in the face of such entrenched interests.

A fund for Citizens' Broadcasting was envisaged in the CA03

179. A number of members of United for Local Television and Public Voice have been active in promoting the cause of citizen's broadcasting over many years. On occasions, indirect funding support may be considered most appropriate to support smaller community broadcasters (for instance, community radio stations obtain gifted spectrum assignments). However, existing legislation recognises that smaller community broadcasters may also benefit from (and in the case of community radio stations be forced to obtain) direct funding support.
180. A fund for citizens' and community broadcasting (radio and television) was envisaged in the CA03 and requires no new primary legislation.²⁸ A Citizens' Broadcasting Fund could be designed specifically to encourage community broadcasting with grants for small producers and local independents, voluntary organisations, charities and the public sector. Such a fund could make a substantial contribution to the development of local communities and local broadcasting.
181. It is important to recognise that the objectives of community media are complementary to, but different from, the objectives of most other established broadcasters. Whilst community media operators are often happy to form partnerships with other operators – commercial and BBC – it would not necessarily be appropriate for community organisations to be dependent upon these organisations for their funding.

Funding for market failure should not merely be focused on the broadcasting establishment

182. There will always be some community programme content that is not viable without funding support. Funding for market failure should not purely be concentrated on the largest broadcasting institutions but, also, on individual citizens' and local groups seeking to make a difference within their own communities. A Citizens' Broadcasting Fund could make a material

²⁸ Section 359 of the CA03 envisaged the possibility of a fund to encourage community broadcasting – both radio and TV.

positive contribution to local communities, including third sector groups targeting the most disadvantaged and vulnerable in society. The Fund need not metamorphose into an “Arts Council of the Air” – funding could be targeted at citizen-projects including volunteering programmes.

183. A modest Citizens’ Broadcasting Fund could enable citizens to find their own voice, creating truly innovative content that the market would not otherwise support. The Fund could be administered by Ofcom with support from third sector groups. Strict conditions of funding could be that groups involve their own communities in programme making and secure a broadcast outlet for all material produced.

Paying for Citizens’ Broadcasting

184. In the short term, United for Local Television believes a case exists for the Government to increase its funding of the existing Community Radio Fund from direct taxation. In the longer term, there are a number of options to fund citizen’s broadcasting more fully. Already, a wide range of arts, cultural and broadcasting projects are supported by charities and the National Lottery. It might be argued that a Citizens’ Broadcasting Fund should be Lottery supported, although consideration would have to be given to the possible impact on other Lottery supported causes.

United for Local Television holds deep reservations about ‘top slicing’

185. When originally established, the “wireless licence” had nothing whatever to do with the BBC – it was introduced almost 20 years before the BBC existed. The licence gave members of the public the right to listen to radio broadcasts from wherever they were transmitted.
186. The licence fee is not a ‘subscription’ comparable to a members association where members can influence policy and elect the BBC Board. The licence fee is a tax for which those who pay have no direct influence over how it is spent. Nevertheless, over many years, the licence fee has become widely regarded as the “*BBC licence fee*” and is a charge which appears to enjoy a great deal of public acceptance and support. This acceptance must exist, to a large degree, due to the affection and enjoyment the UK public has for the BBC itself. The use of the licence fee to directly fund commercial provision potentially risks damaging this public acceptance.

There may be some justification in using the licence fee to support specific citizens’ broadcasting projects

187. United for Local Television shares the concerns, widely expressed, that ‘top slicing’ the licence fee for the benefit of its commercial competitors could undermine the purpose of the fee itself. An established principle of the UK broadcasting ecology is that the BBC competes against other broadcasters for audience, not revenue. This principle could be at risk if the BBC has to compete for access to the licence fee with commercial broadcasters or programme makers.
188. United for Local Television believes that reservation to the general principle of ‘top slicing’ need not necessarily preclude consideration of the use of the licence fee for specific projects or causes, such as the funding of Channel 4’s switchover costs, the switchover help scheme, S4C commissioned programmes or, possibly, even a contribution towards a Citizens’ Broadcasting Fund. Any such proposal would need to be subject to detailed review. However, potentially, a Citizen’s Broadcasting Fund might not undermine the basis of the licence fee, but help further enhance its justification.
189. For the avoidance of doubt, United for Local Television holds strong reservations about a general ‘arts council of the air’ to fund content that would compete directly with content that might typically be expected from the BBC. Although some might see contestable funding as a method to reduce the size and scope of the BBC, this proposal does appear to be at risk of seriously reducing the overall level of funding for PSB provision, “robbing Peter to pay Paul”. Members of United for Local Television instinctively oppose any proposal which could damage the status and future of the BBC at the heart of PSB provision.

The benefits of funding Citizens' Broadcasting

190. To date, the licence fee has been used to fund a single state broadcaster, enabling it to expand from two TV channels ten years ago to fill more than an entire DTT multiplex. Although paid-for by all viewers, this expansion has not necessarily enhanced the production in the UK's nations and regions to a significant degree. A Citizens' Broadcasting Fund could help redress this imbalance – ensuring public broadcasting funds are redistributed to all parts of the UK supporting projects which can make a lasting difference to communities, including some of the very smallest communities in the UK.
191. United for Local Television believes the remit of any Citizens' Broadcasting Fund must be focused on identifying, nurturing and launching new talent from across the nations and regions. The Fund would seek to provide a voice to citizens from all walks of life who could not normally expect to have the opportunity to make their own programmes, including those regarded as socially excluded, functionally illiterate, disabled, of minority ethnic groups, senior citizens and other 'ordinary' people wishing to communicate. The Citizens' Broadcasting Fund would not be about producing low-quality 'You Tube' style content, but thought provoking and engaging programming from a citizen's perspective.
192. **However it is to be funded, United for Local Television would stress any Citizens' Broadcasting Fund must be a responsible and accountable use of public money and subject to rigorous oversight.** Whatever funding sources are identified, United for Local Television believes it is inappropriate for citizen's broadcasting to be controlled by the BBC itself if funding is to be distributed fairly and properly to a range of organisations. This need not necessarily prevent content produced by any such fund from being shown on BBC services, if appropriate.
193. It is important the PSB Review does not purely become a narrow debate between the incumbent broadcasters – the funding of content produced by and for citizens must form part of the remit for the second phase of this review.

Section 8. Options for the commercial PSBs

8j) What do you think is the appropriate public service role for Channel 4 in the short, medium and long term? What do you think of Channel 4's proposed vision?

Channel 4's core strengths are in PSB genres

194. United for Local Television broadly welcomes Channel 4's strategy document, *Next on 4*, which clearly seeks to position the service as a core PSB provider. It is encouraging that Channel 4's vision is to provide strong competition to the BBC in the provision of original UK drama, comedy, news, current affairs and other PSB genres. There is a strong argument this is not just in the public interest but also Channel 4's own interest – re-runs of *Friends* still draw audiences but there would be little to differentiate the channel in a digital age if it were to ever abandon its PSB heritage.
195. *Next on 4* makes clear where Channel 4 aspires to position itself – at the heart of PSB alongside the BBC. Channel 4 is setting itself a genuine challenge. Channel 4 is not a 'mini-me' version of the BBC, seeking to emulate provision in every major area of BBC output. It is unlikely to be possible or desirable for any one broadcaster, outside of the BBC itself, to seek to be quite so broad in its approach. Channel 4 must decide where its core strengths lie.
196. *Next on 4* sets out an exciting vision, but it will need to be followed up by some extremely difficult decision-making by policy makers and Channel 4 itself. All broadcasters are forced to prioritise, there can be no unlimited sources of funding. Channel 4 needs to set out what its programming priorities are. Ideally, these programmes would be paid-for by audiences continuing to use Channel 4 services in sufficient numbers overall. If this is no longer to be the case, it is imperative to consider whether funding support is desirable, what level of support and in what form.

Channel 4 is well positioned to benefit from DSO

197. Channel 4 is well placed to benefit from digital switchover. For the first time, Channel 4 will be available universally across the UK. The youth targeted nature of Channel 4's spin off channels make them attractive and compelling to advertisers seeking this lucrative (and hard-to-reach) audience.
198. It has been argued by some that Channel 4's PSB contribution is under less pressure than the other commercial PSB operators, ITV1 and Channel 5. Channel 4 still enjoys an enormously privileged position in UK broadcasting, as it readily acknowledges by pointing to the reach and impact of its own programming.
199. Potentially, Channel 4 is most likely to fail to capitalise on the opportunities presented by DSO if it diminishes its irreverent personality in order to become a more acceptable candidate for public funding. Channel 4 stands out as an aggressive, edgy, alternative (but commercially savvy) broadcaster. Repositioning Channel 4 as the BBC's little brother (mixed with Big Brother) may not serve to sharpen its product or reinvigorate its appeal. Nobody wishes to see Channel 4 become a department of the BBC tied up in red tape. Channel 4's contribution to PSB is so highly valued partly because it is so different from the BBC.

A commercial PSB, not a non-commercial PSB

200. Channel 4 has appealed to the Government's Communications Think Tank for new legislation to be brought forward "*urgently*" to secure its future. Whilst Channel 4 is right to be concerned for its future, it is important the broadcaster continues to work with Ofcom and Government to indicate what the legislation might actually contain. The worst outcome for all parties would be ill considered legislation.
201. An independent producer is only as good as their last commission. The independent producers who provide Channel 4 with its drama, comedy, entertainment and all other programming have built successful businesses by providing engaging content that is both public service and commercial. Many believe it is vital to the health of Channel 4, and its programme suppliers, that it remains a 'commercial' PSB and does not become a 'non-commercial' PSB.

For Channel 4, less may potentially be more...

202. It is entirely possible that viewers will choose to watch Channel 4 less in the future because they have found other programming they would prefer to watch. It is a challenging argument to sustain that the public should fund Channel 4 so that it can continue to supply the same level of content that it used to produce when it had more viewers. All PSBs must be careful not to seek to over-supply the market with more programming than is truly demanded by the audience post-DSO.
203. The BBC justifies its use of public funding by targeting a very wide audience. One of Channel 4's core strengths is that it is more targeted, with its programming having a disproportionately high impact on a younger audience. Channel 4, like all broadcasters, must beware of spreading itself too thin. A smaller number of high-quality programmes could conceivably produce a greater reach and impact than a larger number of low quality programmes.
204. The UK is relatively unique in forming two strong state-owned broadcasters, with a major purpose of Channel 4 being to counter the strength of the BBC. The arrangement appears to enjoy a wide public acceptance, not least because (for all intents and purposes) Channel 4 is widely perceived as a commercial entity, rather than a state institution. The reach and impact of Channel 4's contribution to PSB programming depends upon it continuing to act as a competitive, but focused, PSB.

Channel 4 is not unique in facing funding uncertainty

205. All broadcasters obtain peaks and troughs in their audience levels – this is part of the normal process of market competition. In all media sectors, operators face some degree of funding

uncertainty. One of the sectors that has been hardest hit by the growth in Internet advertising has been the regional press. Local journalism is under threat, some local papers are even closing. The threat to traditional media is therefore not unique to Channel 4.

206. It is important to put Channel 4's funding into perspective. Channel 4 is the second largest outlet for TV advertising in the UK with its annual income approaching £500m higher than its annual expenditure on UK original production. Its management accept that Channel 4 made a loss on its core channel in 2007 by paying £20m more on acquisitions than it did the previous year and an additional £30m on 'write-offs' (such as programmes under development but not yet shown).
207. There is a danger in appealing for funding whilst competing for US imports against digital channels. To give Channel 4 its due, its management are aware of this danger. Any argument for additional funding is rightly being centred upon keeping Channel 4 honest, not keeping the BBC honest. All accept that the BBC's honesty is not enhanced by Channel 4 making claim to direct funding whilst buying *Desperate Housewives* at an inflated price.
208. There may well be a case for enhanced funding for Channel 4. There is no doubt Channel 4 is seeking to secure its future at the heart of PSB provision. United for Local Television welcomes the debate but, ultimately, Channel 4 will have to produce a business plan just as any business must.

Funding options

209. Over recent times, a wide variety of suggestions have been made for the funding and governance of Channel 4, ranging from privatisation or merger to direct funding from the licence fee. Some of the other controversial suggestions made include:
- Reduce C4's expenditure on non-core areas including investment in high-risk projects such as DAB
 - Explore opportunities for efficiency savings in programming or other budgets – i.e. live within its means
 - Enable C4 to access and/or co-invest in BBC resources or acquire a BBC asset such as an analogue radio frequency
 - Enable C4 to cross-promote its content using BBC airtime
 - Further review C4's terms of trade
 - Increase use of co-productions
 - Provide assistance towards transmission costs / universal service obligations
 - Continue indirect funding including EPG priority status and gifted spectrum
 - Liberalise advertising rules including product placement

Support for Channel 4 must be proportionate, targeted and legal

210. All policy options involve high elements of risk, including the status quo. Channel 4 is well positioned to make a strong case if it chooses to request additional funding. United for Local Television represents a coalition of members and it is not therefore appropriate for it to take a view on the most appropriate means of funding Channel 4 in the future. Whilst supportive of Channel 4, United for Local Television welcomes the consultation which considers any future support for this channel alongside the wider ecology of PSB provision.
211. Channel 4 is a 'big beast' in commercial advertising and this role is very important to balance the dominance of ITV1.²⁹ If Channel 4 focuses purely on competing for niche audiences and addressing market failure, it could leave ineffectual competition for ITV1 which continues to dominate TV advertising receipts with more than 40 per cent of the market.
212. Part of the role for Channel 4, as the nearest competitor to ITV1, is to aim to gradually reduce its ongoing market dominance. Channel 4 should seek to achieve this objective not by

²⁹ Channel 4's net advertising revenue was 19.2 per cent of the total TV market in 2006, less than half of ITV (who commanded 42.5 per cent of the market), demonstrating the need for a strong commercial competitor to ITV whatever the institutional arrangements for Channel 4 (source: *The Communications Market 2007*, Ofcom, August 2007).

appealing to the lowest common denominator, but producing innovative programming that other commercial operators might not be expected to produce.

213. Any financial advantages offered to any broadcaster must be proportionate, targeted and compliant with EU state aid rules. This might mean ensuring that any form of funding or regulatory resources that is offered to one broadcaster (e.g. spectrum subsidy or direct funding for transmission costs) is also on offer to other broadcasters with a legitimate claim to meeting public purposes.

4IP

214. United for Local Television understands that Channel 4 is keen to experiment in supporting and developing provision on new platforms. However, Channel 4's management must consider the wider market impact of their actions.
215. A number of local TV groups have expressed concern about Channel 4's proposal to enter local broadband TV markets without first undertaking a comprehensive public consultation, cost-benefit analysis, impact assessment, public value test or external review of the risk of damaging competition in a nascent market.
216. Today, Channel 4 has a privileged position as a state-owned broadcaster with gifted spectrum assignments. This position may well be under threat. Nevertheless, to use its privileged position to potentially 'crowd out' new investment in local markets with no consideration of the wider market impact does point to a potential flaw in its ongoing corporate governance arrangements.
217. Under its new Royal Charter, the BBC is not be able to enter a new market without first undertaking a Public Value Test. This recognises that contribution to public purposes alone is not a justification for intervention in a market – consideration must also be given to the wider costs and risks of any new service. There is always a danger in Channel 4 receiving public funding, from whatever source, without being subjected to an appropriate degree of regulatory oversight.

8ii) Which of the options set out for the commercial PSBs do you favour?

The UK has up to 60 SD channels at its disposal on the Freeview platform

218. The world has moved on since the Broadcasting Act 1996 conferred PSB status on the analogue broadcasters.
219. In the run up to DSO and beyond, Ofcom and Government face three broad choices:
- accept that PSB status is increasingly meaningless, stripping the privileges of this status from one or more incumbent PSB operators;
 - accept that PSB status is increasingly important, extending the privileges of PSB status to new broadcasters; or
 - a combination of the above two options.
220. The UK has up to sixty (SD) channels at its disposal on the six multiplex Freeview platform, using spectrum gifted to the multiplex operators not by the Government, but by the UK public. It would appear rational and logical for Ofcom and Government to ensure that a proportion of these 60 streams are reserved for public purposes, possibly together with access to the interleaved spectrum where suitable for small-scale local broadcasters (e.g. overseen by a Band Manager).

The current DTT arrangements are disproportionate

221. Contrary to the suggestion that the burden of PSB obligations outweigh the privileges of PSB status, the opposite is true in many cases.

222. Channel's 3, 4 and 5 are each gifted approximately half of an entire multiplex on Freeview. However, all of these broadcasters focus their investment in UK original production on their core channels. ITV plc has announced it intends to invest £20m in original production for ITV2 in 2008 but this was a purely commercial decision, unrelated to Channel 3's PSB obligations. Indeed, ITV plc's presentation to city analysts claimed the investment in ITV2 would be funded by savings made in PSB programming on ITV1. Therefore, ITV plc is replacing PSB programming on ITV1 with non-PSB programming on ITV2.³⁰
223. There is no doubt that ITV2 is a successful commercial service but it does little to justify any association with the privileges of PSB status. By way of example, one of ITV2's famous shows is *Wudja? Cudja?*, a programme in which contestants drink beer through dirty socks and bath in human excrement. A regular feature involves seeing which young female contestant is able to rip their clothes off the fastest. Some may question whether it is an appropriate use of public resources to gift public service broadcasting capacity to this type of pure commercial service.
224. It is difficult to argue that investment in PSB programming would suffer to any material degree if the commercial PSB operators were purely granted free spectrum for their core PSB channels. Any non-PSB services provided by the PSB operators could be forced to acquire spectrum in the market alongside all other non-PSB services. This capacity could then be gifted to new entrants meeting PSB purposes. There is no obvious justification in continuing to gift reserved capacity to commercial operators who then either sell it on for pure commercial gain or use it to protect their market share, denying new entrants the opportunity to gain access to the DTT platform.

There is no logic in extending gifted spectrum assignments beyond PSB channels

225. Sky News fulfils PSB purposes. Does that mean Sky should be gifted a whole raft of free video streams on DTT to use however it sees fit, in order to 'compensate' it for offering Sky News? If not, what is the logic for gifting a raft of reserved streams to the commercial PSBs for their non-PSB services?
226. For some years, Channel 5 sold its gifted capacity to Top Up TV to use for subscription services. Does Ofcom sincerely believe gifting spectrum to pure commercial operators is a justifiable use of the UK's scarce spectrum resource?
227. The Government and Ofcom granted regional licences to Channel 3 operators in return for PSB commitments and licence fees. It appears extraordinary to now gift these same operators a raft of video streams on DTT so that they can sell them on to ITV plc. The current arrangements for reserved DTT assignments risk distorting the UK TV market and should be reviewed in the second phase of the PSB Review.

The European Commission generally supports direct funding to meet universal service obligations for public service broadcasters

228. There is an argument that universal service obligations are a public policy goal the cost of which should be paid for from the public purse. The European Commission has already accepted this argument in principle:

*"It should be recalled that the Commission is in principle in favour of public support for the digital switchover provided that a number of conditions are respected. In particular, the Commission has stated in the past that it would take a favourable view for **"financial compensation to public service broadcasters for the cost of broadcasting via all transmission platforms in order to reach the entire population, provided this forms part of the public service mandate"**."*

³⁰ ITV plc (12-09-07), *ITV strategy update – investor presentation*, London: ITV

Ofcom's research is unsafe

229. Ofcom's deliberative research results are unsafe, based upon the provision of misleading information. By way of example, Ofcom told its Belfast focus group that by 2012:

"UTV, Channel 4 and Five will no longer be obliged to provide PSB programmes."

230. Is this true? When did Ofcom decide it was going to release the commercial PSB operators from any of their existing obligations? Ofcom goes on to state: ***"these channels may decide to stop showing...PSB programmes, which don't attract large audiences."*** How will these channels decide to stop showing any PSB programmes without firstly gaining the consent of the regulator?

231. Ofcom concluded:

*"Therefore in the future it's likely we will need to invest **more** money as a society to maintain **current** levels of PSB....Over to you... Do you think that we, as a society, should invest in the future in order to make sure we keep the level of Public Service Broadcasting we currently have? Or would you be prepared to see a decrease in Public Service Broadcasting Provision in the future?"*

232. Ofcom could hardly have asked a more leading question. Even so, Ofcom's focus groups revealed no overwhelming desire by the vast majority of citizens to pay more for PSB, whether through the licence fee or any other form of funding. If Ofcom wishes to rely upon a citizens' jury to inform its decision making, it must ensure there is a fair trial. Evidence must be presented in a manner that is balanced, fair and accurate. There should be an opportunity for witnesses to be cross-examined. Ofcom's reliance upon partial and grossly misleading evidence can only lead to one conclusion – any verdict reached by its focus groups are unsafe.

There is already £300m of spectrum subsidy in the Freeview platform

233. As Ofcom knows, the commercial Freeview multiplex providers have ceased to act purely as transmission network suppliers and are now profiteering from their role as spectrum gatekeepers. Ofcom might wish to ask a representative sample of the UK's 24m income tax payers if they would prefer to see spectrum valued at £300m gifted to commercial operators or, rather, see this subsidy captured in order to deliver original programming meeting PSB purposes?

234. United for Local Television was set up to support the development of new services with a genuine understanding and commitment to encouraging citizens' to develop their own communications services. United for Local Television founding principle is that the development of local broadcasting on any platform must be transparent, open to new entrants and encourage fair competition in local markets.

235. United for Local Television believes that Ofcom and Government must fully review existing subsidised spectrum allocations as a matter of urgency.

Section 9. Scenarios for the UK's nations, regions and localities

9j) To what extent do you agree with Ofcom's assessment of the likely future long term issues as they apply to the nations, regions and localities of the UK?

The crisis facing local broadcasting is short term, not long term

236. United for Local Television is appalled that Ofcom only appears even vaguely interested in exploring the issues relating to local programming in the long term, when immediate action on this issue is already **long overdue**.

237. The PSB Review appears to split the UK into three distinct levels:

- **United Kingdom** (incorporating Crown Dependencies)
- **Nations and Regions** – Scotland, Wales, Northern Ireland, English regions (the latter based on current ITV1 regions, rather than actual Government Office Regions, and therefore include the Crown Dependencies) and regional programming on STV in Scotland
- **Localities** – undefined by Ofcom but implicitly closer to ITV1's existing "micro regions" (used for advertising sales) or heritage Independent Local Radio or regional daily newspaper areas (e.g. cities and counties)

238. Although imperfect, United for Local Television adopts these same definitions in this submission for the sake of consistency. However, it is not clear that Ofcom has been careful enough to explain its use of these terms in its market research. Ofcom must be careful to explain the meaning of its language if it is to undertake further public research of practical use to policy makers.

Local issues score highly

239. Ofcom's deliberative research programme, carried out by Holdman Pearmain and ORC International for the DDR in 2006, demonstrated that citizen's place access to "*local news and information on your TV at home*" higher than any other TV-related service. At that particular time, "*the main five channels are available in HD format*" scored lowest of all statements tests as set out in the table below.³¹

³¹ Table extracted from *A report of consumer research conducted for Ofcom by Holden Pearmain and ORC International for Ofcom's Digital Dividend Review (2006)*

Table 2 Proportion rating each statement among the most important issues (rankings relate to value to society)

Computers in public buildings are able connect to the internet at low cost	61%	} Local issues score highly
Local news and information are available on your TV at home	58%	
Local news and information about your area is available from at least one media source	54%	
Programmes about your community, local people and events are available on your TV at home	51%	
More channels are made available on Freeview	50%	
High speed mobile internet connections are available – throughout the UK, including the most rural areas	48%	
The latest mobile phone services are available - throughout the UK, including the most rural areas	47%	
Channels broadcast in HDTV are affordable to the vast majority of people	44%	
Mobile TV is affordable to most people	41%	
High speed mobile internet connections are available in towns and cities	41%	
HDTV is available throughout the country	39%	
HDTV is available on Freeview as well as on cable and satellite TV	39%	
The latest mobile phone services and technologies are available in towns and cities	38%	
In addition to your TV at home the main terrestrial channels are made available on new technologies such as mobile TV and the internet	38%	
Mobile TV allows people to access television programmes at times when they wouldn't normally be able to see them	33%	
Mobile TV is available throughout the country	33%	
In addition to standard broadcast, the main five television channels are available in HD format	32%	

Q. PG7. "These are the statements you think are most important for UK society as a whole. Please can you now order these statements to show me which one is most important down to the one you think is least important. Remember, we are talking about importance for UK society as a whole"

TV is the main source of local and regional news

240. As Ofcom knows, citizens' turn to TV for news about where they live before any other media. 63 per cent of adults use TV as their main source of regional news according to Ofcom's PSB Review research, far ahead of newspapers (17 per cent) and radio (8 per cent).³² In the provision of local news, TV remains the biggest provider by far (44 per cent), even though there is no dedicated local news programming on any TV channel, ahead of local newspapers (31 per cent) and radio (7 per cent). These numbers have increased since 2003. In the deliberative research, many commented that local newspapers carry too much advertising and are only available once a week – TV provision is regarded as up-to-date and accessible.

241. Ofcom's research shows it is not just news that is demanded by citizens. "Current affairs about my region/nation" also scores exceptionally highly, regarded as important on the main TV channels by 83 per cent of adults, only marginally behind regional/national news at 88 per cent. Further, over two-thirds (69 per cent) agreed that "it is important ITV1 show a range of programmes about my region/nation aside from news and current affairs".³³

³² Source: PSB Review Survey, Q12: 2,260 interviews, UK adults aged 16+, October – December 2007

³³ Source: PSB Review Survey, Q23, 2260 interview with UK adults aged 16+, October – December 2007

242. Ofcom notes that, far from diminishing, the demand for nations/regions news is actually increasing:

“The importance of nations/regions genre provision has increased since 2003 at UK and nations level in general.”

Wide gap between importance and satisfaction

243. The PSB Review research shows a concerning (but unsurprising) gap between the importance rating and satisfaction rating given to nations/regions news (a gap of 25 per cent) and nations/regions non-news programming (an even wider gap of 28 per cent).

244. The research conducted for the Scottish Broadcasting Commission found the:

“vast majority were interested in watching local Scottish news... Respondents were asked at which level they would like to receive their local news out of three possible levels: city, region and area. The most popular response was ‘region’...by a slight majority of 54%.”³⁴

It is inexcusable for Ofcom not to consider all policy options for local TV properly and in full

245. In paragraph 9.100 of the consultation, Ofcom sets out the issues it intends to consider in more detail in phase 2 of the PSB review. Local TV is notable by its absence. It is difficult to understand why Ofcom should argue that nations and regions provision should be reviewed, but that local TV should be forced to fend for itself, haggling for DTT capacity in the market in competition with shopping and subscription channels.

246. United for Local Television does not agree with Ofcom that the provision of a new local TV network is a long-term issue, perhaps to be considered in a future PSB Review (if at all). Ofcom has offered no explanation why local DDCs (dedicated digital channels) should not be considered as worthy of reserved access to DTT **today**.

247. Local non-news programming is already in crisis. It is wrong to wait five years or more to address this crisis. DSO is happening now. It is inexcusable for Ofcom to continue to refuse to consider the policy options for local TV, properly and in full. There is no logic or reason for Ofcom to conduct research on attitudes to local programming on broadband (almost universally rejected by respondents as an alternative to TV provision) but to fail to conduct objective research on the demand for a dedicated local Freeview channel.

Ofcom’s first PSB Review acknowledged the crisis in non-news programming

248. As Ofcom’s analysis demonstrates, non-news regional programming has already declined substantially on ITV1, falling 44 per cent between 2003 and 2007. In its first PSB Review, Ofcom referred to the decline of regional programming as a “**self-fulfilling prophesy**”. Ofcom acknowledged that the provision of low-quality regional programming, never promoted and/or scheduled in weak slots, directly led to low audience levels. Much of the audience is not even aware that ITV1 offers non-news regional programming, what the nature of this programming is or when it is shown. Consequently, ITV1 is able to argue the audience does not demand this type of programming.

249. Unlike ITV1, new local TV channels would be well placed to provide compelling non-news programming covering, by way of example, local issues, history, the environment, religion, arts, social issues and sport. Local TV channels would be well placed to forge partnerships with local organisations to sponsor and/or contribute towards programme production costs.

250. The crisis facing non-news programming is not caused by a failure in the business model for this genre of programming but, rather, a failure in the model of ITV1. For ITV1 there is an

³⁴ Scottish Government (2008), *Public attitudes to broadcasting in Scotland, TNS System Three research summary*, Edinburgh: Crown Copyright

opportunity cost associated with assigning any place in its schedule to PSB programming – it maximises its profits by replacing local programming with networked content. The opposite is true for a dedicated local TV channel, working in partnership with local organisations to produce its programming and maximise its audience.

251. Existing RSLs provide a small taste of what is possible. Channel M in Manchester works with Salford University, York TV works with CSV (Community Service Volunteers) and SIX TV in Oxford with Oxford Brookes University. The Media Trust, supported by the UK's leading media groups, provides a further example of how partnerships can be successfully developed to build effective communications for the charity and voluntary sectors.

Case for intervention in local TV

252. Since its formation in 2003, Ofcom has failed to conduct a single dedicated consultation on the different policy options for local TV, even though it has frequently acknowledged a risk of market failure which may require policy intervention.
253. Ofcom has accepted there is a strong likelihood of market failure without some form of intervention in nation/region news, as well as non-news programming. According to Ofcom, intervention is:

"...likely to be required in news for the nations and regions, given audience demand for these services, the democratic value of alternative voices and the low likelihood of commercial provision."

254. Having accepted a strong case for intervention, Ofcom's duty is to consider all options objectively, including the possible option of enabling much more local provision by licensing dedicated digital channels with a range of local programming obligations.

The demand for local TV cuts across all political parties

255. In the passage of the Communications Act 2003 the Government explicitly stated that Ofcom would be expected to consider local TV as part of its core duties to citizens. In rejecting Lord Thomson of Monifeith's proposed amendments on 6 May 2003 Baroness Blackstone responded for the Government:

*"Ofcom already has a number of general duties that one would expect to encourage the development of local TV... I am confident that that will happen. Ofcom's duty in Clause 3(1) is to further the interests of consumers and the community as a whole. Put in the context of Ofcom's duty in subsection (2)(c), to secure, **"a wide range of television and radio services which . . . are both of high quality and calculated to appeal to a variety of tastes and interests"** and one can see the relevance of Ofcom supporting and encouraging the development of community TV and radio."*

256. The demand for local TV cuts across all parties. In the Adjournment Debate in the House of Commons on 24 April 2007, Edward Vaizey for the Conservatives, stated:

"I do not want locally auctioned channels to be block-bought and turned into gaming or shopping channels; there must be a system to ensure that local television continues."

257. By 19 June 2008, 159 MPs had signed Early Day Motion 1013 calling for universal access to public service local television for all citizens.

258. The House of Commons select committee for Culture, Media and Sport has called for DTT capacity to be "seized" for local TV:

"We welcome the development of local television and the potential it offers to provide a valuable community service. We would hope that the opportunity offered by

analogue switch-off will be seized to allow the establishment of local television services.”³⁵

It would be wrong for Ofcom to dismiss requests from the nations and regions of the UK to consider local TV provision without conducting any cost benefit analysis

259. In all parts of the UK, a debate is developing about the future of sub-regional broadcasting provision. Last year, Lord Sandy Bruce-Lockhart, Chairman of the Local Government Association wrote to Lord Currie, Chairman of Ofcom:³⁶

“Television is still the greatest source of information flow. I believe that it is essential for television to have a stronger element of regional and particularly local news and programmes. The changes in Government policy and in the Local Government Bill are very much about emphasising the importance of ‘place’, the fostering of a sense of local identity and belonging. But they are also about, needing to hold local decision makers to account locally, through local Select Committees, local council leaders, and those that head up the NHS, Police and other local public institutions. Again this requires public awareness to create interest. Each of these challenges would be greatly advanced by local television.”

260. On 19th September 2006 Alex Neil MSP, Chair of the Culture and Enterprise Committee of the Scottish Parliament, also wrote to Lord Currie:

“I am writing to you to request that no decisions are made on the use of broadcast spectrum that exclude the introduction of Local TV channels with DTT roll out to reach all households in Scotland. Furthermore, spectrum should not be allocated or regulated so as to restrict or inhibit the introduction in future of new independent public channels from and for Scotland.”

261. It would be wrong for Ofcom to dismiss appeals to consider local TV provision across the nations and regions of the UK without even the courtesy of conducting a full analysis and consultation on the options.

There might never be a better opportunity to introduce local TV in the UK

262. The strength of DTT today offers Ofcom a ‘once in a generation’ opportunity to launch a new tier of local TV that could be viable and successful. The inherent value of DTT capacity reflects the industry consensus that this platform will remain dominant for the coming decade. Nevertheless, in ten to twenty years it is conceivable the Freeview platform will have been supplanted by other platforms over which Ofcom and the Government may have significantly less regulatory control.
263. It might be much more difficult for Ofcom and Government to ‘pump prime’ a new tier of local broadcasting in ten to twenty years. By that time, existing providers of local newspapers may be severely weakened by the rapid growth in on-line classified advertising. ITV1’s regional programming is likely to have been stripped to the bones, if still surviving in any form.
264. Ofcom acknowledges that the public want “*more and better*” regional programming. Yet Ofcom appears to be resigned to the inevitable the public will be denied their wishes. Whilst ITV1 only provides its regional programming under duress, there are a plethora of local organisations and commercial operators interested in providing dedicated digital channels focused on local areas, all of whom are denied access to the regulatory resources gifted to the incumbent PSB operators.

³⁵ House of Committee Culture Media and Sport Committee (March 2006), *Inquiry on Analogue switch-off*, London: Crown Copyright

³⁶ 12/06/07

Placing the citizen at the heart of policy debate

265. The strength of enthusiasm for and engagement with the democratic process is vital to sustaining a healthy representative democracy.
266. UK voter turnout in General Elections has fallen 17 points in a decade, from 78 per cent in 1992 to 61 per cent in 2005. The overall turnout figure masks wide variation in participation rates according to ethnicity, occupational class, income, educational attainment and age. In the 2005 election, youth turnout was 37 per cent – half that of older age groups.³⁷
267. Policy makers have a stark choice when facing these facts. Consign local TV to the Internet. Accept that only the most educated and older citizens' will read local newspapers and engage in local democracy. Or take positive action. Accept that television continues to enjoy the greatest power in influencing minds whatever the age, class or background. Use local TV to empower citizens and place them at the heart of policy debate.

It would be highly imprudent for Ofcom to place all its eggs in ITV1's basket

268. Former Ofcom CEO Stephen Carter, now strategy chief to the Prime Minister, told The Guardian in 2006 he believed Ofcom should be considering a new tier of local TV to replace ITV1's regional programming:

"If we had completely withdrawn all obligations on ITV in relation to non-news regional programmes, for example, the debate around alternative provision would have been much sharper. It would have helped the debate on whether a new alternative version is needed, on a local level beyond the BBC."³⁸

269. Ofcom is almost certain to come to regret placing all of its eggs in ITV's basket. It makes sense for Ofcom to allow a new local TV sector to emerge now, rather than wait until ITV plc has requested to abandon all of its regional programming (as it has already promised to) post-DSO. Before ITV1 next demands another reduction in regional programming, Ofcom could have successfully coordinated a UK-wide local TV network.
270. In the short-term, local TV channels could be introduced to complement existing ITV1 regions/nations provision. However, in the medium to long term, it is at least conceivable that dedicated local channels would entirely replace ITV1's non-network programming obligations. A successful local TV network, with universal UK-wide coverage, would not only be able to provide more local programming than ITV1, but also more region/nation programming shared as appropriate between franchise areas.

Once again Ofcom praises the contribution to localness made by radio, supported by free spectrum, whilst refusing to even assess the main policy options for local TV

271. Ofcom refers to the important contribution made to localness by radio, although it fails to point out this is supported by gifted spectrum denied to local TV. In the PSB Review, Ofcom states:

"In radio, local and community stations are significant players at a local level. They make important contributions both in terms of their provision of material at a more granular, local level than is provided on broadcast television, and in their ability to contribute different voices and perspectives and to support plurality at a wider media level."

272. Consistently and without a hint of irony, Ofcom refers to the lack of local TV provision in the UK as justification to gift free spectrum to local radio.³⁹

³⁷ The Electoral Commission (October 2005), *Election 2005: turnout – how many, who and why?*

³⁸ "The Restless Regulator", *The Guardian*, 9 January 2006, interview by Maggie Brown

³⁹ For example, Ofcom states: "*The public policy we have followed in the UK has ensured that almost every part of the UK has at least one commercial local station.... providing local news and ensuring a plurality of local voices alongside the BBC. Given that television in the UK has never been local and that even regional commercial television has been in retreat in recent years, local commercial radio has provided the only source of broadcast local news and information as an alternative to the BBC.*"

273. Ofcom recently stated:

“Radio allows for the expression of local viewpoints in a way that reaches far more people than a local website does and with a far greater level of access to express different viewpoints than the hour or so a day of regional television, which covers bigger areas and rarely engages viewers directly in debate. As such, access to the airwaves is important and it is in the public interest for there to be a plurality of such access to ensure that different viewpoints can be heard.”⁴⁰

274. Ofcom is aware that commercial local radio makes a very marginal contribution to “*different voices and perspectives*” being primarily music led. According to Ofcom’s own research only 7 per cent of adults use radio as their main source for local news, compared to 44 per cent for TV. So why does Ofcom actively intervene to reserve spectrum for local radio, at the same time as it is withdrawing the RSL licensing regime for local TV?

275. By regulating localness on radio, but not television, Ofcom’s broadcasting policy is inconsistent and out of touch with the overwhelming public demand for local news, information and debate **on television**. This demand is not restricted to the English regions – it is seen to exist throughout all parts of the UK. It is inexplicable why Ofcom is so adverse to cost-benefit analysis on the policy options for local TV.

Universal local provision requires regulatory support

276. There can be no logical reason to suggest regulatory support is required in the provision of local radio but not in TV when all evidence suggests citizens value localness in TV much more highly. It is inevitable the market will deliver limited local content on both radio and TV without any regulatory intervention. However, it is also inevitable that market provision will be patchy and sub-optimal, under-supplying the needs of citizens if there is no effective policy to coordinate and protect universal provision of local broadcasting.

9ii) Which model(s) do you think will be most appropriate in each of the nations and in the English regions in the long term, and why?

The case for Channel 6

277. United for Local Television is deeply disturbed that this question is phrased to exclude provision in the localities.

278. If there is demand for local TV in 50+ micro regions of the UK, commissioning new independent sub-regional content every evening, then the most simple and cost-effective means of delivering this is not any form of ‘contestable’ funding. A diversity of local programming, satisfying public thirst for local content, can only be delivered by a dedicated local TV service, with guaranteed access to DTT and cable.

279. United for Local Television has put forward a proposal for Channel 6 as a new dedicated digital channel.⁴¹ The main characteristics of the proposed new service are that it would be:

- an explicit public service channel, with a core commitment to local news and current affairs;
- promote citizens access and local production, supporting voluntary organisations and providing airtime to community media; and
- enhance TV advertising opportunities for local businesses.

Source: Ofcom (November 2006), *The Future of Radio – The future of FM and AM service and the alignment of analogue and digital regulation*, discussion document, London: Ofcom

⁴⁰ Ofcom (April 2007), *The Future of Radio The future of FM and AM services and the alignment of analogue and digital regulation* (consultation), London: Ofcom

⁴¹ United for Local Television (January 2008), *Consultation Response – The Future of Digital Terrestrial Television*, Sheffield: United for Local Television

280. Channel 6 would enhance the provision of public service content produced outside of the south of England serving interests such as ethnic programming, faith programming, agriculture, fisheries, Celtic programming, community regeneration, Objective One status regions – not just on a local level, but also nation and pan-UK.

Access to local news and information should be universal

281. United for Local Television believes Ofcom and Government should work together to introduce a local TV order, establishing a UK-wide network of independently licensed local TV channels. The repetition of local programmes during the course of a 24hour schedule is one of the key factors in making local TV viable around the world. It also provides the important opportunity for viewers to tune-in to see the local programming of appeal to them, at their own convenience and a time of their choosing.
282. United for Local Television disagrees with the option to contract one or more suppliers of nations/regions news as a contributor to the ITV1 schedule. One of the key benefits of local TV is its ability to innovate and experiment, forging close networks in the community and drawing upon local producers (whether professional or community based). The schedule and format of a local channel should not be dictated centrally by Ofcom, but determined voluntarily by independent local operators forming their own arrangements.

Bringing communities together

283. A local TV service would aim to foster mutual understanding, tolerance and respect amongst those of different cultures, backgrounds and faiths. This is vital at a time in which racial and ethnic tensions are surfacing in many communities. Local TV is uniquely well placed to inspire debate on controversial issues in a balanced and responsible manner and encourage difference to be appreciated rather than feared.

Those who cannot read or write gain nearly all of their information from television

284. Those who struggle with reading and writing gain nearly all of their information from television. The functionally illiterate are one of the least likely groups to use the Internet as a resource for local information. The unemployed and those on low incomes are also disproportionately less likely to have a home Internet connection.
285. The greatest demand for local TV comes from low income sub-groups, the over-65's and those with minimal interest in digital technology. In the latter category, a remarkable 50 per cent of the entire group rate local TV on Freeview as their preferred application.⁴² That is why one of the most appropriate mediums to promote education, training, employment opportunities and other public services in any given area is a local terrestrial "Channel 6".
286. Whilst there is a role for on-line learning for adults, free-to-air television is the most obvious medium to target those lacking in basic skills. Crucially, local TV is able to target its programming to promote local projects and initiatives, creating partnerships with local service providers.⁴³
287. Ofcom research, conducted for the DDR, shows 16 per cent of adults are interested in watching "educational/informative programmes" on a local TV channel.⁴⁴

⁴² Source: *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

⁴³ Existing RSLs such as SIX TV have produced compelling examples of the need for local TV to support local self-improvement and community cohesion projects. The South East England Regional Skills for Life Campaign recently concluded that SIX TV in Oxford provided "pound for pound, the most effective impact" for its basic numeracy campaign. (Source: Oxford Broadcasting Limited)

⁴⁴ Source: *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

A voice for groups often marginalised in society

288. Channel 6 would provide a focal point for the community and for local area partnership agendas. Third sector organisations are part of the fabric of modern society – often trusted by their users because they are neither state nor market. Channel 6 would provide a voice for voluntary organisations to communicate with their own local community – explaining their activities and appealing for wider support.
289. Crucially, Channel 6 would open up programme-making opportunities, providing the benefits and transferable skills which local volunteers and trainees can gain from engagement with the broadcast and production process. There is considerable evidence the disengaged can be attracted to make a positive contribution to society as a result of involvement in media, gaining skills they can take with them into their working and social lives.
290. Those often marginalised in society – older people, the disabled, young people and ethnic groups would be granted the opportunity to make programmes and express their voice.

A forum for communities of interest – including religious and ethnic communities

291. At a time in which many community leaders are reporting falling attendance for formal acts of worship, a channel able to provide a forum for Ministers of all religions to discuss relevant modern issues would be widely welcomed. The issues of interest and concern to all faith communities – integration with a secular society whilst maintaining deeply held convictions and identities – can be most readily explored on a local TV service with community leaders in debate with members of their community. The issues of relevance to the audience – dating and marrying outside the religion, maintaining ancient customs in a modern society – could be debated on TV amongst members of religious groups who may rarely (or never) attend formal services or study texts at home.

Enhancing sport and participation

292. Channel 6 would have a major role in promoting sporting and leisure activities for all ages. Local leagues and amateur associations would gain television coverage, often for the first time.
293. London and Glasgow could have their own dedicated ‘sixth’ channels on DTT for the 2012 Olympic Games and 2014 Commonwealth Games respectively, able to provide news and information to residents and visitors.

ITV1’s commitment to non-news regional programming appears increasingly tokenistic

294. Crucially, a local TV channel would have an incentive to produce engaging local programming in order to attract local audiences and local advertisers. Local content is the USP of local TV. This is the opposite of the case for a network channel such as ITV1. For many years ITV1 has only offered sub-UK programming mainly under duress. Non-news programmes are hidden in the schedule, generally never to be seen again. The risk is that if Ofcom were to recommend direct funding to maintain regional programming on ITV1, it would be entrenching a tokenistic attitude at the taxpayer’s expense.
295. Ofcom’s PSB research shows that 86 per cent of all adults want more non-news programming about their region/area on the main channels.⁴⁵ Ofcom chose not to research support for a dedicated local TV channel. However, logic suggests it should not matter to viewers whether new local programming is on Channel 3 or Channel 6, so long as it exists and is easily accessible to them. Indeed, the benefit of a dedicated local channel is the knowledge it is likely to carry a significant proportion of local programming. Outside of its early evening news, few would switch on to ITV1 expecting to find local content.

⁴⁵ Source: Q35, 2,260 interviews with all UK adults aged 16+, October – December 2007

ITV1 regional news provision and local TV are complementary and not substitutes

296. Regional news provision is part of the heritage of ITV1. United for Local Television will refrain from commenting on detailed proposals for ITV1's regional programming at this stage, but strongly asserts that even existing ITV1 regions should be seen as complementary to local TV and not a substitute – different forms of “local” broadcast provision can and do co-exist in many countries around the world. It is conceivable that the existence of a new local TV network might even be an effective means of exerting pressure on ITV1 to retain a strong regional structure, to maintain a share of local advertising. However, it is important to recognise why local programming on a dedicated digital channel might achieve much greater reach and impact than on ITV1. Unlike ITV1, a local TV channel is free to repeat local programmes throughout a 24 hour period, not only increasing the opportunity for programmes to be seen but also greatly reducing the cost-per hour of programme production.
297. It is impossible to predict the state of ITV1 in five years from now, who will own and manage it or what their priorities might be. Whatever reductions in ITV1 regional content might be agreed by Ofcom now, the sad reality is that these will almost certainly only be a stepping stone to yet further reductions in the future. Having already abandoned much of its regional programming, the case for new channels with a sincere commitment to local content appears overwhelming.
298. It would be wrong to wait until ITV1 has cut its regional programming spend even further to start to consider alternative provision. United for Local Television believes local TV channels should be introduced on Freeview prior to DSO and prior to any long-term decisions being taken about the future of ITV1's national and regional programme commitments.

How would Channel 6 be different from existing regional provision on BBC1 or ITV1?

299. United for Local Television proposes that Channel 6 on Freeview is reserved as a local service. Wherever a person resides in the UK, the sixth channel would be a local channel dedicated to local programming. Channel 6 would not ‘look’ or ‘feel’ like existing nations/regions programming provided by BBC1 or ITV1. Although the purpose of competing services is to enhance choice for the viewer, the reality is that the format of regional news and other programmes on the BBC and ITV1 are substantially similar.
300. Channel 6 would offer significant differences to existing provision. By way of example:
- Channel 6 could provide dedicated news programmes to at least **50** sub-regions across the UK (and potentially many more subject to consultation). This is more than **3 times** the number of news programmes offered by BBC1 for the UK's nations and regions.
 - Based on Ofcom's initial findings, reported in its DDR statement, viewers demand around 2 hours of original local content a day. If translated into a licence condition, Channel 6 could be expected to provide **4 times** the level of new non-networked programming as BBC1 in peak-time.
 - In larger Channel 6 franchise areas there could be specific news bulletins targeted at micro regions within the coverage area (e.g. a London channel may have a news programme for North London, followed by South London, East London and West London). This contrasts to the wide-area regional news provision reflected in the limited time available for non-networked content on the BBC.
 - Existing RSLs often show programmes produced by universities and community groups. Channels could have licence conditions to encourage local debate and discussion, community access, social action, participation and independent production. There would be a wide range of opportunities for local groups, charities and individual citizens to access schedules with locally relevant content, enhancing the plurality of voices and opinions broadcast. This contrasts to the centralised and homogenous format of the ‘in-house’ BBC regional news style which limits opportunities for innovation and experimentation or in-depth analysis.

- Further original programming could be produced dedicated to the nations of the UK and Government Office Regions of England. This contrasts with the excessively limited nation and region non-news content on the BBC.
- Repetition of programming, already important to the viability of other PSB programmes, would be encouraged to enable local programmes to maximise their reach and impact.

301. As can be seen, even where Channel 6 regional franchise areas are comparable to existing BBC1 or ITV1 regional news areas, the **content** could be expected to be very different.
302. A sustaining service could be developed by Channel 6 operators pooling their content and that already available from other operators, such as The Community Channel.

TV is the 'first choice' platform for display advertising

303. Television is often regarded as the most powerful medium in the world and as the 'first choice' for advertisers seeking to build brand awareness.
304. The local TV business model relies, to a significant extent, on local advertising.⁴⁶ This is because 'national' advertisers already have cost-effective access to a number of established 'UK-wide' TV services. In contrast, small-to-medium sized local businesses, operating independently from 'national' chains, do not currently have access to a choice of TV advertising opportunities. It is not generally cost-effective for a local business, targeting consumers within a 25-50 mile radius, to advertise on any existing digital TV channel.

Almost every country in the democratic world intervenes to ensure there is a plurality of TV advertising outlets for local businesses

305. Although ITV1 does sell in 'micro regions', the vast majority of airtime is bought in bulk by media agencies on behalf of 'national' brands. A single agency will often commit to acquire airtime on an annual basis. This mechanism 'crowds out' local independent advertisers. 'Regional' advertising on ITV1 is generally sold to a local business at a substantial premium to that paid by agency buyers.⁴⁷
306. The UK is almost entirely alone in failing to offer independent businesses a plurality of TV outlets from which to choose to place their local and regional advertising. This has the effect of pricing television out of the budgets of the vast majority of independently owned businesses.

Why a new network is needed to break ITV1's monopoly of regional advertising

307. Independent businesses cannot reach their full potential without a more level advertising playing field with their 'national' rivals. It would seem highly inequitable for not one single channel (out of 30+ on Freeview) to offer realistic affordable advertising solutions to local businesses seeking to enhance their own profitability.
308. A new 'sixth' public service network, selling in 50+ micro regions, would help to create a more level advertising playing field between local and 'national' brands.

The economics of local TV

309. On 6 November 2006, the consultant, Phillipa Marks, submitted a report to The Competition Commission inquiry into the acquisition of National Grid Wireless Group by Macquarie UK Broadcast Ventures Limited.⁴⁸ Phillipa Marks questioned many of the assumptions made in the business analysis on local TV produced for Ofcom and DCMS by Spectrum Strategy Consultants in 2005.

⁴⁶ It is reported that, in the US, local advertising typically makes up around 55 per cent of local TV station advertising

⁴⁷ Regional advertising is not covered by the CRR mechanism imposed on ITV plc in 2003

⁴⁸ http://www.competition-commission.org.uk/Inquiries/ref2007/macquarie/provisional_findings_working_papers.htm

310. Chiefly, Phillipa Marks argues that local TV cannot be expected to deliver the level of profitability assumed by Spectrum when operating on a modest cost base in a competitive, multi-channel and cross-media environment.

Why Phillipa Marks is wrong and Spectrum is right

311. Leaving aside the pejorative language used throughout the report, United for Local Television believes there are a number of flaws in Phillipa Marks analysis. In particular:
- the report makes no reference to local TV markets around the world where the video journalist model is established and proven; and
 - there is no compelling evidence that audience demand for local TV programming has significantly diminished as a result of the rise of multi-channel TV and the Internet. By way of example, whilst there is some evidence of audience fragmentation impacting on the main PSB channels, there is extremely limited evidence that the rise in multi-channel TV has had a material impact on the demand for local TV. In some cases, audiences for region/nation news programmes from the incumbent PSB operators have actually increased in popularity.

Phillipa Marks relies largely upon conjecture

312. Phillipa Marks analysis relies significantly on conjecture, such as the statement that:

“The advent of mobile TV... could have a negative impact on the viewing of traditional TV and advertising revenues.”

313. Such statements ignore Ofcom’s DDR research which showed considerably greater support for local TV than mobile TV. This comment also fails to consider the potential positive impact mobile TV and other new platforms could have on the overall local TV business model.

The Spectrum analysis is prudent and credible

314. The advertising revenue for many UK-wide TV channels is greatly influenced by their ‘share’ of all TV viewing. If a digital channel obtains a 1 per cent share of all viewing it would also aspire to obtain a 1 per cent share of all TV advertising spend from the agencies (although in practice, agencies tend to deeply discount the CPT rates applied to the smaller channels). Share of viewing is of much less relevance to a local TV channel, because the majority of its revenue is sold locally. In a local market, advertisers will base spending decisions on the reputation, quality of service and value offered to them by the alternative media available. A local Freeview channel offering a solid reach could be expected to be an attractive addition to the local media mix, albeit with a potential impact on other media (e.g. radio and the web).
315. United for Local Television believes the general conclusions arrived at by Spectrum, having researched the subject, remain prudent and credible. By way of example, the chief conclusion made by Spectrum that stand-alone local TV services could become profitable reaching a potential population of around 750,000 deliberately ignored:
- the potential benefits of gifted regulatory resources such as reserved multiplex capacity and EPG priority status;
 - the efficiencies and synergies from being part of a UK-wide network sharing resources, programming and regional/national advertising (including the ability to share presentation talent across several news programmes as well as studio and other resources);
 - a wide range of possible synergies and benefits from partnerships with local organisations e.g. cross media cooperation between newspapers and radio or local authorities, public agencies, universities and community groups (the latter potentially supported by forms of direct funding);

- the ability of a local channel to provide targeted programming by scheduling a programme for one area followed by a neighbouring area, enabling smaller DTT transmitters to be aggregated to provide viable services; and
- the evidence from around the world that, unlike national TV, local TV is not just sold on CPTs to agencies but, frequently, on fixed annual contracts with independent local businesses (as is commonly the case in local radio). Whereas national advertising agencies have access to dozens of digital TV channels, a local advertiser will generally only have access to one effective local TV channel, enabling this channel to charge a significant premium to the CPTs obtained by digital channels operating in the national advertising market.

Case study – Channel One in Liverpool

316. An example of one local TV channel which operated in a purely multi-channel environment (rather than analogue terrestrial environment) was Channel One in Merseyside. The channel was launched with the objective of using cable (at that time Telewest) to provide local TV to the Merseyside area. Despite significant audience levels amongst those able to receive the service, Channel One ultimately closed due to the challenge of operating on the cable platform (only in 30 per cent of homes). Channel One commissioned research showed it had the highest weekly reach of all multi-channel services in cable homes at that time.

Cable channels watched in last 7 days

% 2001 (base of 412 cable subscribers in Liverpool)

Channel	Per cent
Channel One (local TV)	52
Sky One	37
UK Gold	36
Discovery	35
Living	29
Sky Sports 1	26
ITV2	25
Sky Sports 2	25
Sky News	23
Eurosport	22

Source: Channel One viewing survey, The Murray Consultancy; Trinity Mirror Regionals

Spectrum concluded that local TV could be viable anywhere

317. Contrary to the impression sometimes given by Ofcom itself, the Spectrum report did **not** state that local TV might only be viable in major metropolitan areas. Spectrum’s conclusion was that local TV operators should seek to target audiences of around 750,000 if they wish to be viable as stand-alone commercial services.
318. Spectrum was not asked to provide any advice on how a local TV transmission map might be configured to cover the UK’s metropolitan, urban or rural areas. However, it goes without saying that some DTT transmitters could be combined with neighbouring transmitters to generate larger audiences in rural and semi-rural areas, should this be considered beneficial.
319. As Spectrum concluded, it is **access to DTT** which makes or breaks the local TV business model. As Spectrum also suggested, a handful of stand-alone channels operating in isolation on an ‘ad hoc’ basis is the **least likely** model to achieve the true potential of local TV. With coordination and planning, a UK-wide network could be established enabling resource sharing and sales synergies of substantial benefit to operators.

Can local TV break even?

320. The cost of operating a local TV channel contains many variables and would inevitably reflect the size of area covered. However, the Spectrum analysis suggests that a base ‘local news’

channel could break-even on a typical operational cost of as little as £461,000 per annum, breaking down as follows:

Programming costs	£227,000
Distribution costs	£73,000
Sales and marketing costs	£49,000
Staffing costs	£111,000
Total costs	£461,000

321. This cost is modest compared to many existing local commercial radio stations. The question is whether this cost is realistic and, if so, whether local TV can sensibly expect to 'steal' revenues from existing local media, including local radio, local newspapers, outdoor and/or the web.
322. Evidence in the UK and around the world suggests that advertisers prefer TV to the traditional media, especially for display (e.g. non-classified) advertising. If offered a credible local TV option, broadcasting on Freeview alongside the incumbent PSB channels, it is difficult to imagine many local advertisers would not want to spend.

Channel 9 TV News – case study

323. One of the smallest local TV channels in the UK is Channel 9 TV based in Derry/Londonderry (also serving Limavady, Coleraine and Strabane), targeting a potential adult audience of around 230,000.
324. Channel 9 TV recently changed its ownership and management. However, for over six years, Channel 9 TV's nightly news programme attracted phenomenally high audience levels. Channel 9 TV commissioned research suggested that its local news at 6.00pm, produced by a core team of three video journalists, was watched by 48.5 per cent of the audience every week.⁴⁹ This reach is for just one 30 minute programme.
325. The Channel 9 TV example demonstrates that it is possible to obtain exceptional audiences for local TV on extremely modest budgets.

Ofcom's first PSB Review concluded there was significant demand for local TV

326. The Channel 9 TV experience is in line with the conclusion of Ofcom's first PSB review, which recommended further analysis of the policy options for local TV. According to Ofcom:

"The English regions are often too large to be relevant to most viewers, who tend to live most of their day-to-day lives within at most 25 miles of their homes and be most interested in news and community issues within that range...."

"Both our qualitative and quantitative research suggests that people identify most strongly with their neighbourhood, town and city: If there were ways of delivering cost-effective TV services at this level, we believe they would be significantly more compelling than current regional provision."⁵⁰

Can low-budget programmes attract big local audiences?

327. There will be some who refuse to accept that there is an alternative to the traditional production model for news and current affairs. However, they are wrong. As local TV stations around the world prove daily, video journalists can produce quality local news and current affairs programmes. In many cases, these programmes can be supplemented by local producers, community groups and universities.
328. Often, the passion with which a programme is made is as important as the programme budget. Frequently, local community groups can and do contribute significantly to existing local TV

⁴⁹ Source: c9tv website, research by UMS / Millward Brown Ulster, 2001

⁵⁰ Phase II review of Public Service Broadcasting, Ofcom, 2004

operations in a way that is unimaginable within the confines of the ITV1 network schedule. Such programming is unlikely to be discovered if confined to the Internet. Local news provides an appointment to view and a new reason to tune into local TV daily – and can then be used to drive traffic to other local content.

329. There is no reason why the UK should stand alone, denied the benefits of its own local TV network, other than fear of new entrants and/or protectionism on behalf of the broadcasting establishment.

A sixth public service network

330. A “sixth” public service network could:

- be operated by local companies in the micro regions of the UK, enhancing regional production, employment & advertising opportunities;
- provide local news & information targeting at least 50 micro regions – as well as dedicated programming for the UK’s nations and regions;
- enhance the provision of under-served public service content including educational, arts, cultural, social action and religious programming;
- promote media literacy, participation and active citizenship; and
- end the monopoly of the incumbent PSB operators over universal multiplex capacity, enhancing plurality of broadcast outlets in the interests of viewers and advertisers.

Why does Ofcom commission research only to ignore the findings?

331. It is difficult to understand why Ofcom commissions independent research only to ignore the results. Ofcom’s research found no support for regional programmes consigned to the Internet. So why does Ofcom suggest that: “*competitive funding models might also offer new opportunities in the sphere of online content at a national, regional and local level*”? What part of the words “*not on broadband*” does Ofcom fail to comprehend? Why does Ofcom appear to have closed its mind to the one new application which came first in its DDR consumer research – local TV on Freeview?
332. A news bulletin in which viewers selected only the stories of most interest to them (and skipped those of less interest) would not fulfil PSB purposes. The linear programme model has evolved over many decades because viewers **want** a news provider to exercise editorial judgement, to provide them with a programme that is educational and informative.
333. It would be surprising if, following the DSO process, Ofcom felt that switching from channel 3 to channel 6 to obtain local programming would be too confusing for a viewer, but that identifying local content on the Internet would cause no difficulties at all.

Programming in the nations requires separate review from local provision

334. Concerns have been expressed that network news bulletins tend to be disproportionately dominated by news stories impacting on England, to the detriment of other nations within the Union. There is an ongoing debate about whether the most appropriate solution is to enhance the coverage of the nations in network bulletins, or to increase the frequency and/or duration and quality of the dedicated nations bulletins.
335. A common complaint in Wales is that Welsh news provision is Cardiff-centric, just as Edinburgh dominates the Scottish bulletins, and London the UK news programmes. It is therefore important to separate the issue of news provision for the nations from news provision for the localities. They are both separate and, to a large extent, unconnected concerns.

336. It is outside of the remit of United for Local Television to offer conclusions on policy options for non-local provision – either UK-wide or in the nations. However, United for Local Television notes that one of the most effective means of increasing the range of programming made by and for the nations would be to establish a UK-wide Channel 6 network, enabling relevant programme sharing across the nations and regions within a loose (and probably informal) federal structure.

Engaging in the debate

337. A number of existing institutions (the BBC, ITV1, S4C and GDS) between them are well placed to provide dedicated programming for the nations, potentially supplemented by new institutions in the future. The Channel TV franchise broadcasts to a total adult population of around 120,000 – around half that served by the independent local TV channel SIX TV in Oxford. If Channel TV is viable it is difficult to understand why STV is not.
338. The devolved administrations in Scotland and Wales have both commissioned their own reviews of national broadcasting provision. Ofcom should seek to engage constructively with these reviews and, if necessary, be prepared to make capacity available on DTT for dedicated digital channels if a consensus emerges (with the Westminster Government) in favour of new services, whether or not sharing capacity with other programme services.

Northern Ireland

339. United for Local Television believes the Government and Ofcom should consider making provision for the main Irish public services, RTE1, RTE2 and TG4, to broadcast universally in NI post-DSO (analogue signals have always been available to many viewers in NI). This would ensure that a good provision of Irish-language and English-language programmes are available across the island of RoI and NI, including Irish news.
340. United for Local Television recognises that the UK Government has allocated funds for Irish language programming through the ILBF fund, made available to broadcasters such as BBC and TG4 and the local TV service NvTv. United for Local Television suggests consideration be given to extending this fund and the future possibility of providing for Ulster Scots programming on a similar basis. This form of programming can provide significant benefits to the wider community involved in the productions – schools, arts, cultural and heritage projects.

9iii) What are your views on short/medium-term issues referred to, including the out-of-London network production quotas?

341. Viewers are entitled to expect the incumbent PSB operators spread the economic benefits of TV production across the UK, providing employment and ensuring all of the UK's major conurbations are reflected on screen. United for Local Television agrees it is important to review the imposition of out-of-London production quotas on the incumbent PSB operators, potentially ensuring they are no less rigorous on the BBC as ITV.
342. United for Local Television trusts Ofcom's investigation into ITV's failure to meet its quotas for the past two consecutive years will result in appropriate sanctions, since a failure to meet these obligations is a serious abuse of its PSB status. United for Local Television agrees with the issues for further consultation raised by Ofcom, including the option of reviewing possible quotas for the nations.

9iv) What are your initial views on the preliminary options set out relating to ITV plc's regional news proposal? (Please note that Ofcom will put forward firm options on these issues, and consult also on ITV plc's regional news proposal, in phase 2 of this Review.)

343. Please see the earlier response to question 9 (ii).

Section 10. Prospects for children's programming

10j) Do you agree with our assessment of the possible short term options available relating to children's programming; are there any other options available?

The 'crisis' in children's programming is real

344. It is difficult to understand why Ofcom is considering urgent action on children's programming but not local programming which is both more important to democratic engagement and in an even worse state of crisis. In children's programming there are a wide range of dedicated digital channels, including two BBC children's channels. United for Local Television does not question the importance of addressing the issues in children's programming but, rather, Ofcom's refusal to undertake a similar dedicated consultation on the future of local TV.
345. Ofcom's claim that its modelling suggests there is no business case for programming for older children has never been made public. Channel 4's Hollyoaks maybe a 'soap' but it is also an example of original UK drama targeting a core teen audience, every weeknight, which is financially viable. Channel 4's 'T4' slot already targets teens, albeit with some very commercial (sometimes quite salacious) programmes.
346. It is notable that many older children can and do enjoy TV, both US and UK originated. In principle, there is nothing concerning with teenagers watching UK programmes targeted at a wider audience such as EastEnders, Doctor Who and The X Factor. Ofcom's role and purpose is not to create work for independent producers. The 'crisis' in children's programming is real – but perhaps one of the lesser challenges concerning typical teenage parents. Public policy must focus on attempting to persuade young people to play sport and be active but, when they get home, there is still plenty of interest on TV.

Where there is a market failure in children's content, then policy makers should first look towards the BBC

347. Plurality in news is essential to the democratic values of a free society. In contrast, plurality in children's content is important to enable the BBC to compete effectively in the market.
348. Apart from dedicated content on BBC1 and BBC2 (including CBBC and BBC Switch segments), the BBC has three dedicated services for children and young people which produce some excellent content:
- CBeebees (2-6s)
 - CBBC (6-12s)
 - BBC Three (16-34s)
349. Despite the development of the BBC Switch brand, targeting teens, there is a concern that UK-originated provision for this age group is diminishing on the BBC as well as commercial operators. Two of the BBC's longest running drams for this age group, Grange Hill and Byker Grove, have recently been axed. One option might be for BBC Switch to broadcast in the early evenings when the teen audience, like any audience, is most prominent. Whilst any decision is ultimately for the BBC itself, United for Local Television welcomes the BBC's decision to review its provision for older children and teenagers.

The future of children's radio

350. Children's radio provision has never been subjected to any Ofcom review. Indeed, whilst Ofcom has conducted numerous radio consultations, the regulator has never sought to identify under-provision of PSB radio content in the manner it has for television. It is difficult to understand how Ofcom's interventions in the radio sector can be focused on addressing market failure if Ofcom has never sought to quantify what market failure may exist. Ofcom may wish to consider the future of children's radio as well as children's television.

Extending children's plurality

351. The funding of a pure commercial TV service for children must take account of the limited audience available (in round terms, only 0.5m in each age year) and the limits Ofcom and Government impose on advertising to children on public health grounds.
352. Ofcom is right to continue to act cautiously so as not to introduce distortions into this market, or into the nascent market for digital content. Ofcom has produced no compelling evidence to suggest a website for children would generate greater reach or impact than dedicated digital channels for children and teens on Freeview. It is a fair assumption many more children have TVs in their bedrooms than wireless laptops.

An effective solution for children and teens

353. The crisis facing children's TV is not a new problem – it has been known since the first PSB review. The cost of children's TV is not just the direct cost of production but, rather, the **opportunity cost** for the incumbent PSBs of showing content targeting a very small audience, compared to the much wider audience for adult targeted quizzes and chat shows.
354. United for Local Television was set up to campaign for local TV on Freeview and does not ultimately take a view on the most appropriate mechanism to address any deficit in the provision of other PSB genres. However, it is notable that the solution to the under-supply of children's programming may not be radically different from that which United for Local Television suggests for the under-supply of local programming – dedicated digital channels.
355. It is beyond reasonable question that dedicated children's and teen's channels on Freeview would be able to invest more in original content than similar services purely restricted to satellite or the Internet. There would be no shortage of applicants for dedicated digital channels with gifted Freeview capacity. Investment in indigenous UK production could form part of the licence condition, as would a requirement to provide a multi-platform service (including Internet). The licence could be awarded by Ofcom through a fair, open and transparent mechanism and would require no new public subsidy beyond that already gifted to Freeview's non-BBC multiplex operators. Importantly, this solution would not raise the licence fee and, therefore, have no impact on the BBC's ability to provide children's content.

Section 11. Timetable for implementing a new model

11i) Do you agree that new legislation will need to be in place by 2011 in order to ensure continued delivery of the public purposes in the medium and long term?

Action is needed now, not in 2011

356. Throughout the consultation, Ofcom claims not to hold a view on which options it prefers (if any). Suddenly, at the end, Ofcom claims that legislation is required, although it offers no views on what this legislation might contain. The consultation failed to clearly explain what market failure Ofcom expects to occur or, more importantly, why. Very often, the most effective solution to market failure is to address its root cause – a lack of effective market structures. It is therefore difficult to agree with Ofcom's conclusion on either the necessity or timing of any new legislation. That said, United for Local Television welcomes the debate and sense of urgency suggested by Ofcom.
357. DSO has, in reality, now happened. Almost 90 per cent of TV households are digital. If Ofcom wishes to use the DSO process to deliver new digital channels then waiting four years until 2011 seems an extraordinary long time. If Ofcom's PSB Review concludes that new dedicated digital channels are desirable then it should move forward with Government to licence them in **2009**. No new communications act is required, merely a willingness to listen, to think and to act positively in the interests of citizens.

The consultation raises more questions than it answers

358. The consultation recognises public dissatisfaction in existing local programming provision, but offers no constructive suggestions to address this dissatisfaction. Ofcom appears entirely preoccupied with the incumbent PSB operators and, inexplicably, with broadband provision.
359. Ofcom's first phase consultation deliberately raises more questions than it answers. Ofcom's second phase consultation needs to firmly answer the question raised by 159 MPs in Early Day Motion 1013 – when are Ofcom and Government going to roll-out universal local TV?

DTT viewers need saving from pure commercial services

360. The DTT platform offers a basic-tier of services to all citizens. It is not intended to replicate the choice available on other platforms such as satellite, cable or broadband. There have always been alternative platforms offering 'public service content' – that is no excuse for allowing the DTT platform to be closed to new entrants offering public service programming, alongside the incumbent PSB operators.
361. The licensing of dedicated digital channels does not necessarily require new primary legislation but, rather, Ofcom and Government to work together to implement existing legislation effectively.

The analysis presented in the consultation is flawed

362. In the consultation, Ofcom argues that the spectrum subsidy provided to commercial operators is diminishing, thereby impacting on the potential for future investment in PSB. There are two main problems with this premise:
- Much of the historic spectrum subsidy Ofcom alludes to has **always** been used to deliver excess profits for broadcasters. Famously, one ITV franchisee claimed to have been granted a "licence to print money".
 - The six Freeview multiplexes have been granted a monopoly of an enormous part of the spectrum previously used by analogue television. None of these operators paid a market price for this spectrum. The public has a legitimate expectation that the subsidy provided to the Freeview platform (currently worth circa £300m per annum) is used to deliver public purposes.

Citizens are entitled to expect effective intervention

363. There is no functioning competitive market for DTT multiplex capacity. Without reserved access to this capacity, the main beneficiary of direct funding to support new public service entrants would be incumbent DTT operators, not programme makers. Public funds would be diverted from the taxpayer in order to 'buy back' capacity at a spectacular premium. This would not represent an efficient use of public funds.
364. Citizens are entitled to expect public policy intervention to ensure that at least a proportion of DTT multiplex capacity is used to provide services that benefit the public and public policy objectives – not just those services which are most financially rewarding to their shareholders.

Maximising value to society

365. By creating a false distinction between "*PSB*" and "*commercial*" Freeview multiplexes, Ofcom allows the value of UK-wide frequency assignments to be misappropriated generating supernormal profits for commercial operators at the expense of the UK public. It is therefore little wonder that Ofcom Chairman Lord Currie is quoted by the House of Lords Select Committee on the BBC's Charter Review (published 1 November 2005) as saying: "*In ten years or even five years time, we will have a monopoly provider of public service broadcasting.*"

366. Ofcom's DDR research⁵¹ showed the most popular new DTT services are:

- new high quality PSB channels in SD on Freeview; and
- local TV on Freeview.

367. Encouraging a diverse range of new SD services on the DTT platform can be seen achieve a number of Ofcom's policy objectives, enhancing:

- broadcasting plurality post-DSO, in line with Ofcom's statutory duty to secure a wide range of universal television services catering for a variety of tastes and interests;
- choice and competition for viewers and advertisers; and
- total value to society.

The Government's delayed consultation on local TV is long overdue

368. United for Local Television was pleased to see Ofcom suggest, in its statement on *The Future of DTT* (3/4/08), that the proposal to reserve capacity on a universal multiplex for local TV may warrant consideration. United for Local Television believes further analysis is required as a matter of urgency. Indeed, it was promised by Ofcom in its own DDR statement:

"we have decided not to intervene (in the allocation of DDR spectrum for local TV)...but we believe it is important to consider the issues faced by such services that generate broader social value. We will do so in our second PSB review"

369. The broadcasting minister, Lord McIntosh, promised the 2005 Scottish Local TV Forum that the DCMS would undertake a dedicated consultation on the future of local TV, saying:

"We intend to begin the process by publishing a consultation paper that will explore all aspects of local television. Key issues include:

- *what local television should be;*
- *what is the likely level of demand from operators and from audiences;*
- *how large or small an area should local television services cover;*
- *should we have a local television service in all areas of the UK;*
- *would some kinds of local television services be better delivered by other means such as broadband;*
- *should services be operated as community services or commercial services or a mixture of both;*
- *what might be the options for funding local television services; and*
- *what might be in an Order for the licensing of local television services."*

370. It is understood that the planned DCMS consultation was postponed in order to allow Ofcom to undertake its own study on the future of local TV provision. However, none of the questions suggested for consultation by Lord McIntosh have ever been addressed by Ofcom in any of its consultations to date. Ofcom and Government now have the opportunity to address these outstanding questions, undertaking full cost benefit analysis on the policy options for local TV.

If this is not market failure, what is?

371. The demand for access to news and information on events, activities and services within a local community remains as strong as ever. In a modern democracy, it is shocking that there is no dedicated local news channel, universally available, focused on local events, local people and local issues.

372. The UK has one of the highest digital TV penetrations in the democratic world but is also one of the least well served for local TV provision. If this is not demonstrable evidence of market failure, what is?⁵²

⁵¹ Digital Dividend Review Market Research 2007 Executive Summary, Ofcom, November 2007

373. No market is perfect which is why, in the real economy, markets are regulated, local authorities are granted rights of compulsory purchase and the state determines how land is used through the planning system. Intervention to determine the services carried on Freeview is the broadcasting equivalent of town planning – essential to ensure no use dominates to the exclusion of parks, open spaces, and other forms of use which enhance the quality of life for all citizens.

Where is the justice?

374. Is it justified that a pure commercial service, such as ITV2, is gifted capacity on a universal multiplex without even a beauty parade but that a service with a strong commitment to public service, such as a local TV channel, is expected to haggle for capacity in the market? Why should ITV2 be gifted UK-wide spectrum but the provision of local TV be based on a postcode lottery?
375. There can be no serious question that Ofcom's market led DDR auction process will not lead to the emergence of a universal local TV network serving public purposes. The high demand for spectrum from pure commercial operators is known to Ofcom who have even gone so far to reference this demand as their main reason for not reserving provision for local TV.
376. Traditional TV has a particularly special role to play in disseminating news and information, the prerequisite of an informed democracy. Almost every democratic country, outside the UK, reserves capacity on their major TV platforms for dedicated local channels. Has the rest of the world really got it completely wrong?

Time for action

377. Local TV is potentially the greatest new contribution to public service broadcasting that could be made by Ofcom and Government in the coming decade. Every citizen, no matter where they live, could have their own local TV channel keeping them informed on local news and enabling them to participate in local debates.
378. **There is nothing to be gained from waiting until 2011 for the benefits of local TV for all.**

⁵² The UK also has the most active online population in Europe, with the highest average number of daily visitors (21.8m), the highest usage days per month (21 per user), and the highest average time spent per month per user (34.4 hours). Source: comScore via E-consultancy blog, June 2007

We Believe

- **In a free and fair society at least one channel should be a local channel representing the views and opinions of local people.**
- **Local TV, more than any other resource, has the potential to educate people about the issues that directly affect their lives.**
- **The evidence of demand for both local TV and enhanced SD plurality on Freeview is overwhelming.**
- **Ofcom and Government must undertake an urgent consultation on the future of local television including the case for Channel 6 as a sixth public service network broadcasting across the United Kingdom.**

Further information

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Annex 1

ABOUT UNITED FOR LOCAL TELEVISION

United for Local Television (ULTV) is an umbrella group representing a broad range of local television practitioners, advocates and voluntary organisations from the commercial, community and municipal sectors.

United for Local Television believes the potential economic, social and democratic benefits of local TV are of such a magnitude that a new network should be granted 'public service' status with guaranteed access to universal DTT multiplex capacity alongside incumbent PSB operators.

United for Local Television further believes access to interleaved frequencies must be protected by Ofcom (or any future Band Manager) to enable local TV to develop smaller-scale services at the hundreds of DTT relay sites in use across the UK.

PUBLIC VOICE

Public Voice is the UK's leading coalition campaigning for citizen's interests in communications policy. United for Local Television has established a working agreement with eight members of the Public Voice Steering Group to campaign together on local TV issues in 2008. The terms of the working agreement state that "*Public Voice and ULTV believe that in a free and fair society at least one channel should be a local channel representing the views and opinions of local people.*"

United for Local Television and Public Voice have agreed to submit separate consultation responses to Ofcom's first phase consultation on the PSB Review. Therefore, this submission does not represent the views of Public Voice. The Public Voice response to Ofcom's consultation is not confidential and is available on request from the Community Media Association.

DISCLAIMER

ULTV consultation responses are approved by the ULTV Management Committee representing a cross-section of the ULTV membership. The purpose of ULTV is to represent the consensus views of its membership. Whilst all ULTV members are committed to the aims and purpose of the organisation, it should not be assumed that all members will necessarily agree with every view or opinion expressed within consultation responses.

MEMBERSHIP

Local Television / Restricted Service Licence (RSL) holders:

- Capital TV, Media4Creative (1 RSL – Cardiff)
- MATV, Midlands Asian Television (1 RSL – Leicester, Virgin and Sky)
- SIX TV, Milestone Group (5 RSLs – Oxford, Fawley, Southampton, Portsmouth and Reading)
- York TV and Norwich TV, EBS Newmedia (2 RSLs – York and Norwich)
- Northern Visions/NvTv (1 RSL – Belfast)

Community and Local TV Operators and Campaigners:

- Association of Community Television Operators (ACTO)
- Community Media Association (CMA)
- Institute of Local Television
- Fife and Media Access Projects Scotland
- Peter Williams Television
- Rural Media Company, West Midlands
- Somerset Film
- Southwark TV & Community TV Trust
- Station House Media Unit, Aberdeen

Annex 2

6 good reasons why the UK needs Channel 6....

1. **Enhancing local democracy:** An opportunity to see and hear local representatives, for politicians to speak and be questioned on local issues, enhancing discussion and debate.
2. **Promoting civic information:** An outlet for schools, charities, sports associations, community groups, ethnic groups, museums, voluntary associations and public organisations to promote their services – encouraging participation and active citizenship.
3. **Fulfilling the purposes and characteristics of PSB:** A tangible medium for engaging citizens with content that supports tolerance, understanding and mutual respect, reflecting cultural diversity and increasing knowledge. Targeted programming to promote local projects and initiatives, creating partnerships with local colleges and the public sector to tackle problems such as lack of basic skills and social disengagement.
4. **Regional production and citizen access:** Distinctive regional production and an outlet for experimentation and risk-taking – with opportunities for the development of new talent and formats – thereby widening access to broadcasting for new independent producers, people from different backgrounds and viewers themselves, creating new media employment and access opportunities across all the nations and regions of the UK.
5. **Encouraging enterprise and economic development:** Geographically targeted advertising and sponsorship opportunities for local businesses – currently ‘crowded out’ of almost all commercial TV airtime by national brands, plus economic features covering retail, property, recruitment and training.
6. **Plurality of broadcasting voices:** An alternative to the national PSB’s in the provision of bespoke regional and sub-regional news and current affairs – providing much-needed competition and an outlet for innovative new content to be shared on a region, nation and UK-wide basis. A voice not just for geographic communities but also communities of interest such as senior citizens, faith groups, parents and the young.

....No good reason why not.

Annex 3

Reserving DTT capacity for new public services – an illustrative example

The Government has accepted Ofcom's proposal to 'upgrade' one of the existing three public service multiplexes to enable new technologies to be introduced. Ofcom's current proposal does not maximise spectral efficiency as it fails to place all services with regional programme variations on a single multiplex, as recommended by its technical consultants, Zetacast. Nevertheless, even accepting the current core proposals, there are many opportunities to introduce new public services on both the universal multiplexes and commercial multiplexes pre-DSO, in addition to any new 'DDR' spectrum that could be reserved to serve public purposes.

Illustrative example

Multiplex	Current Operator	Potential PSB services and Dedicated Digital Channels (DDC)
B (PSB3)	BBC Free to View	Cleared of existing services to enable new technologies e.g. DVB-T2 and MPEG4.
1 (PSB1)	BBC	BBC1 (15 variants) BBC 2 (4 variants) BBC 3 / CBBC BBC 4 / CBeebies BBC News 24 Channel 6 – local TV DDC (minimum 50 variants) S4C/GDS/TG4/Teachers TV in Wales/Scotland/NI/England respectively
2 (PSB2)	Digital 3 & 4	Channel 3 (28 variants) Channel 4 (6 variants) Science / nature DDC News DDC Five (4 variants) BBC Parliament BBCi red button Children's DDC / Teen's DDC Arts PSB
Across other three multiplexes	SDN/NGW	S4C2 (Wales) / RTE (NI) Sports DDC Factual DDC Additional gifted capacity for any of the incumbent PSB operators for +1 services etc (e.g. 2 each if required) Potential for circa 20 additional streams

Annex 4

OFCOM'S DDR PROPOSALS CANNOT WORK FOR LOCAL TV – WHY UNITED FOR LOCAL TELEVISION ADVOCATES LOCAL TV FOR ALL

An attack on democracy

United for Local Television believes that Ofcom's decision to abolish the RSL regime reflects an attack on a fundamental tenet of democracy – an informed citizenship.

Ofcom's position on the interleaved spectrum is disingenuous

The main argument Ofcom has used against reserving any capacity in the geographic interleaved DDR spectrum for local TV is that the 'opportunity cost' of any such intervention would be unacceptably high. According to Ofcom's DDR statement, reserving just 25 interleaved frequencies for local TV could have an opportunity cost of up to £400m over 20 years. It is evident that Ofcom could only have reached this conclusion having assessed that there is very strong demand for interleaved spectrum from pure commercial operators. Based on this assessment of the opportunity cost, for Ofcom to claim that it believes there is a serious prospect of local TV operators acquiring good interleaved frequencies in an application-neutral auction appears deeply disingenuous.

It is odd for Ofcom to argue there is extremely high demand for interleaved spectrum at the same time as arguing that local TV operators have a strong prospect of success in the auction process – the two arguments obviously contradict each other. For Ofcom to claim, as it now seeks to, that there are many interleaved frequencies which are likely to be of only modest value, blows a hole through its December 2007 DDR statement. The opportunity cost of reserving a part of the interleaved spectrum for local TV cannot possibly be high if the value of the spectrum itself is low. The interleaved spectrum that is most suitable for local TV either has a high value, or a low value, it cannot be both.

A combination of market and regulatory failure

Contrary to Ofcom's suggestions, local TV operators are **not free** to negotiate Freeview carriage with existing multiplex operators. In discussions, multiplex operators have made clear they do not wish to enter into localised carriage agreements but to retain capacity for UK-wide services. Furthermore, there is no effective functioning market in Freeview capacity. It is therefore regrettable that Ofcom has reneged on its 2007 Annual Plan commitment to investigate "*the rules which promote fair and effective competition in relation to terrestrial multiplexes*".⁵³

Incomprehensibly, Ofcom is arguing local TV operators should pay a premium to access DTT via auction or in the market at the same time as it is proposing to grant gifted multiplex capacity for HD/DVB-T2 to the incumbent analogue broadcasters rapidly shedding their PSB obligations.

Ofcom's auctions appear certain to destroy what little local TV exists

It is conceivable that local TV may emerge in some areas where interleaved frequencies are so unattractive that they are not wanted by any other services. This does not represent a strategy to deliver public service local TV to all UK citizens but, rather, a dismissal of Ofcom's own DDR research – which clearly showed higher public support for local TV than any other new spectrum use, including HD.

⁵³ In its 2007/8 Annual Plan Ofcom committed to complete its review of "*wholesale digital TV platforms*" and "*the rules which promote fair and effective competition in relation to terrestrial multiplexes*". Ofcom has since reneged on both these commitments.

Ofcom's spectrum auctions appear certain to destroy what little local TV exists in the UK. Access to news and information is a universal right. An informed democracy is too important to be left to chance. Local TV cannot succeed in the UK if it is not coordinated to ensure it is UK-wide, with the benefits of national advertising, network synergies and due prominence on the EPG to drive traffic to local content.

It appears unlikely many local TV operators will participate in Ofcom's auctions of interleaved spectrum

Members of United for Local Television have sought to engage in constructive dialogue with the DDR process and have given careful consideration to the opportunities presented by it. Unanimously, all members of United for Local Television have reached the conclusion that Ofcom's current proposals for an application and technology neutral auction of interleaved spectrum cannot provide the regulatory environment required for the successful development of a new tier of local broadcasting.

Ofcom's DDR proposals cannot conceivably deliver a UK-wide local TV network, required to maximise viability. The purpose of local TV is to provide a socially valuable service, not to compete against shopping and subscription channels for access to spectrum. Ofcom cannot reasonably expect public service local TV channels to pay a premium, out-bidding pure commercial operators, in order to address the deficit in local broadcast provision on UK television.

The RSL regime was established on the principle that spectrum would be gifted in return for public service commitments. To expect these same RSLs to now participate in an auction process, competing against shopping and subscription channels, appears absurd. In conversations, some senior Ofcom staff have acknowledged this, suggesting local TV operators best hope might be to negotiate some of the least desirable spectrum from a band manager (appointed with the primary duty to protect the interests of PMSE users).

United for Local Television is opposed to any proposal for local TV to acquire spectrum on an 'ad hoc' basis. This can only deny the benefit of being part of a successful UK-wide network with cost and sales synergies.

It is inconceivable that Ofcom's DDR process will provide a functioning and effective UK-wide network for local TV. **Any decision whether or not to participate in the auction process will be taken by individual local TV operators, on their own, at the appropriate time. However, it appears unlikely that many new local TV operators will want to participate in what, at present, appears certain to be a severely flawed auction process.**

United for Local Television is not fundamentalist in its approach to local TV

United for Local Television is pragmatic and realistic in its aspirations and has not taken a fundamentalist approach to the development of local TV. United for Local Television argues that every UK citizen should have at least one channel available to them providing locally relevant programming. United for Local Television has consistently called for a local TV channel map to be developed with the benefit of citizen research and public consultation so, that a Local TV strategy may be established with citizen and consumer involvement.

Ofcom's research demonstrates overwhelming public demand for local TV

In Ofcom's recent DDR research, "*local TV on Freeview*" was the **number one** new application demanded by consumers, ahead of both "*extra SD channels*" and "*HD on Freeview*".⁵⁴

⁵⁴ Ofcom (November 2007), Digital Dividend Review Market Research 2007 Executive Summary, London: Ofcom

Importance to you personally of services that could use digital dividend spectrum⁵⁵

Order of popularity	Application	Mean average score out of 10
1	Local TV on Freeview	6.3
2	Extra SD channels on Freeview	6.2
3	Better mobile phone coverage and mobile broadband	5.9
4	Wireless home networks	5.7
5	HD on Freeview	5.6
6	Mobile TV	3.3

The case for Channel 6

United for Local Television has put forward a proposal for a sixth public service network available to virtually all UK citizens – “Channel 6”. Wherever a person is in the UK, channel 6 on Freeview would be a local channel.⁵⁶ Under the proposal, there would be at least 50 local Channel 6 franchise areas across the UK (and potentially many more subject to consultation). In addition to local content, Channel 6 would be able to carry arts, cultural, educational and other public service programming currently denied a terrestrial airing as a result of the virtual monopolisation of Freeview multiplex capacity by the analogue incumbent broadcasters.

There is currently no obvious business model for local TV on broadband

As DCMS/Ofcom commission economic analysis has proven, there is currently no business model for investing in significant original online local content. This report’s main conclusion was that local TV is not viable without access to DTT:

*“..the greatest impact is felt when DTT is extracted, suggesting that this platform is **core to the delivery of a profitable service...**”⁵⁷*

Simon Waldman, Chair of the Association of Online Publishers, wrote in a recent book commissioned by Ofcom:

“The most commercially successful local digital businesses tend to have one thing in common: they make no significant investment in original content.”⁵⁸

Even if a business model could be developed, the highest demand for local TV is from those who are most sceptical about digital technology.

Ofcom’s suggestion that local TV is best suited to the Internet is undermined by its own research. This shows the highest support for local TV on Freeview comes from the sub-group who are most sceptical about using digital technologies.⁵⁹ This is the group who most want to watch a local TV channel but would be excluded from doing so if Ofcom’s suggestion for an Internet-exclusive business model was implemented.

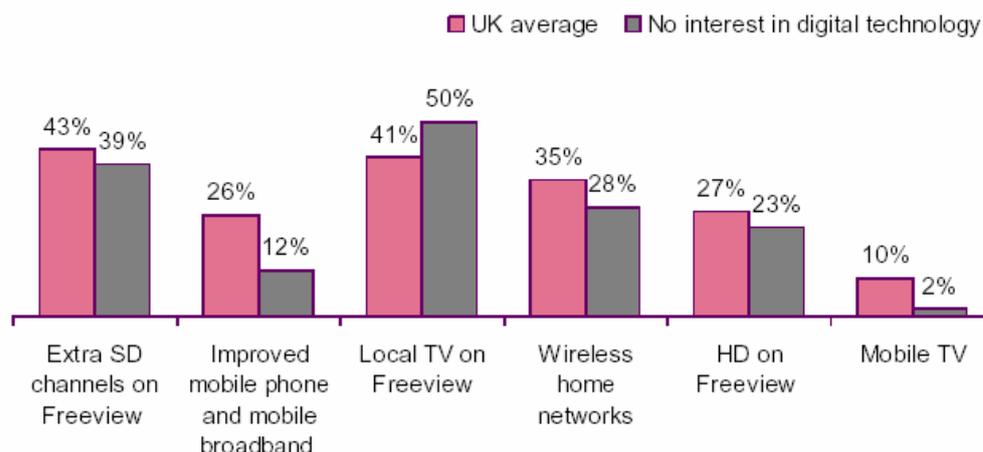
⁵⁵ Q8.3a “For each of these services please score each on a scale of 0 to 10, where 10 means extremely important and 0 means not at all important to you personally” (mean scores are shown). Source: Ipsos MORI survey 2007 Base: UK adults 1,049

⁵⁶ United for Local Television (March 2008), Official Policy Statement – The Case for “Channel 6” as a sixth public service network broadcasting for and from the localities of the UK, Sheffield: United for Local Television

⁵⁷ Spectrum Strategy Consultants (November 2005), The economics of delivering local digital audio-visual and interactive services”, London: Spectrum

⁵⁸ Waldman, Simon (May 2008) writing in The price of Plurality Choice, Diversity and Broadcasting Institutions in the Digital Age, Edited by Tim Gardam and David A L Levy, Oxford: Reuters Institute for the Study of Journalism of the University of Oxford

⁵⁹ Ofcom (November 2007), Digital Dividend Review Market Research 2007 Executive Summary, London: Ofcom



Source: Ipsos MORI survey 2007 UK Base: 1,049, no interest in technology: 217

No country anywhere in the democratic world argues that the only way local broadcasters should be able to gain access to the main TV platforms is to out-bid national broadcasters.

Failing to reserve any capacity for local TV will result in the general denial of programming to UK viewers that provides civic information and promotes engagement with local democracy, local educational initiatives, local public services and local issues. In contrast, a core local Freeview channel would be well placed to drive traffic to an interactive locally-focused broadband offering.

ITV has an effective 100 per cent monopoly in local TV advertising

ITV1 currently has a 100 per cent monopoly as the only television channel that is available to local businesses. Regional advertising makes up approximately 10 per cent of ITV1 revenue as it uses this monopoly status to charge a premium to local advertisers.

In almost all other market-based economies, the Government intervenes to ensure there is a plurality of effective TV advertising outlets available to local businesses. The UK is almost alone in granting a TV advertising monopoly in a local market to one major operator.

Section 244 of the Communications Act 2003

It is to be expected that quasi-UK TV channels will always outbid local TV channels for access to suitable DTT capacity. The demand for DTT capacity is so high that even partial UK coverage is attractive to many pure commercial channels such as shopping and subscription services.

All evidence suggests that the market cannot and will not deliver local TV without reserved access to Freeview. The Government knows this. That is why this government made provision in section 244 of the Communications Act 2003 for an order to introduce Local Digital Television, intended to bring the UK in line with almost the whole of the rest of the democratic world by making capacity available for local TV.

United for Local Television advocates local TV as a universal service available free to all citizens. United for Local Television believes Ofcom and Government must reserve suitable Freeview capacity to enable local TV to develop across the UK.

Available upon request:

United for Local Television Official Policy Statement – The Case for “Channel 6” as a sixth public service network broadcasting for and from the localities of the UK